



MIAMI BEACH

OFFICE OF THE CITY MANAGER

COMMITTEE MEMORANDUM

TO: **Neighborhood/Community Affairs Committee**

Commissioner Edward L. Tobin, Chair
Commissioner Jerry Libbin, Vice-Chair
Commissioner Jorge Exposito, Member
Commissioner Jonah Wolfson, Alternate

FROM: Jimmy L. Morales, City Manager

DATE: October 28, 2013

SUBJECT: MEETING OF THE NEIGHBORHOOD/COMMUNITY AFFAIRS COMMITTEE (NCAC) ON
MONDAY, OCTOBER 28, 2013

A meeting of the Neighborhood/Community Affairs Committee has been scheduled for Monday, October 28, 2013 at 4:00pm in the City Manager's Large Conference Room, 4th Floor of City Hall.

The agenda for the meeting is as follows:

OLD BUSINESS

1. Status Update For The Beachwalk From 3rd Street To Fifth Street

*Commission Item C6A, April 17, 2013
(Requested by Commissioner Gongora)*

Jay Fink, Public Works Assistant Director

2. Discussion Regarding The Possible Renaming Of 21st Street, From Miami Beach Drive To Washington Avenue, As "Collins Park South" And 22nd Street, From Miami Beach Drive To Dade Boulevard, As "Collins Park North"

*Commission Item C4I, September 11, 2013
(Requested by Mayor Matti Herrera Bower)*

Eric Carpenter, Public Works Director

3. Discussion Regarding The Disability Access Committee's Motion In Regards To Alternative Leaf Blowers

*Commission Item C4M, September 11, 2013
(Requested By Commissioner Michael Gongora)*

Hernan Cardeno, Code Compliance Department Director

4. Discussion Regarding Water Taxi Proposal

Commission Item C4D, September 11, 2013

Max Sklar, Tourism and Cultural Development Director

We are committed to providing excellent public service and safety to all who live, work, and play in our vibrant, tropical, historic community.

To request this material in accessible format, sign language interpreters, information on access for persons with disabilities, and/or any accommodation to review any document or participate in any city-sponsored proceeding, please contact 305-604-2489 (voice) or 305-673-7218 (TTY) five days in advance to initiate your request. TTY users may also call 711 (Florida Relay Service).

NEW BUSINESS

5. Discussion Regarding The Log Cabin Property And The Possibility Of A Collaborative Community Center

Commission Item C4K, October 16, 2013
(Requested By Commissioner Tobin)

John Rebar, Parks and Recreation Department Director
Maria Ruiz, Office of Community Services Division Director

6. Discussion Regarding Potential Options For Collins Canal Project/Discussion Regarding Interim Landscaping Options For The Dade Boulevard Shared-Use Path Project

Commission item C6B, October 16, 2013
(Requested by Commissioner Tobin)

Jose Gonzalez, Transportation Manager

7. Discussion Regarding Alternative Location For Dog Park In South Pointe Park.

Commission Item C4K, October 16, 2013
Requested by Commissioner Tobin
(Discussion only)

John Rebar, Parks and Recreation Department Director

- c: Mayor and Members of the City Commission
Jimmy L. Morales, City Manager
Jose Smith, City Attorney
Jose Jimenez, Assistant City Manager
Kathy G. Brooks, Assistant City Manager
Mark Taxis, Assistant City Manager
Eric Carpenter, Public Works Director
Marcia Monserrat, Special Projects Administrator
Rafael E. Granado, City Clerk
Mariano Fernandez, Building Department Director
Richard Lorber, Planning & Zoning Manager
Hernan Cardeno, Code Compliance Department Director
Alexis Denis, Procurement Director
Barbara Hawayek, Customer Service Manager

Neighborhood/Community Affairs Committee Meeting
October 28, 2013

Status Update For The Beachwalk From 3rd Street To 5th Street
Commission Item C6A, April 17, 2013
(Requested by Commissioner Gongora)

Jay Fink, Public Works Assistant Director

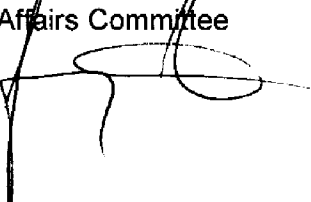
ITEM #1



MIAMI BEACH

COMMITTEE MEMORANDUM

TO: Neighborhoods and Community Affairs Committee

FROM: Jimmy L. Morales, City Manager 

DATE: October 28, 2013

SUBJECT: **DISCUSSION ON THE BEACHWALK II PROJECT FROM 3RD STREET TO 5TH STREET**

At the March 19, 2013 Neighborhoods and Community Affairs Committee (NCAC) meeting, staff was instructed to move forward with Phase II (3rd Street to 5th Street) of the Beachwalk II Project and report back in 60 days to the NCAC. At the September 30, 2013, the NCAC asked that a status update be provided at October's meeting.

BACKGROUND

The Beachwalk II Project consists of an on-grade paver pathway that will connect South Pointe Park to the existing serpentine promenade in Lummus Park at 5th Street. In order to expedite the Coastal Construction Control Line permitting process, the City split the project into two phases: Phase I – South Pointe Drive to 3rd Street and Phase II – 3rd Street to 5th Street.

Florida Department of Environmental Protection (FDEP) regulations require the project be located as far landward as practicable on the landward side/slope of the dune. Thus, the preferred location of the project is in the existing hardpack along the western toe of the dune. While this area already being utilized by the public for recreational purposes, this area is private property. Section 718.111 of the Florida Statutes states that a condominium association may acquire, convey, lease, or mortgage association real property in the manner provided in the condominium documents, and if the documents do not specify the procedure, then approval of 75 percent of the total voting interests is required. Staff has reached out to all the properties located between 3rd Street and 5th Street to again request easements and copies of each property's condominium documents to confirm each association's ability to convey the necessary easements to the City. The City has been unable to secure the necessary easements from the property owners to place the path on their properties (landward of the dune) in the existing hardpack.

On August 5, 2013, the design consultant and City staff met with FDEP for a pre-application consultation to propose placing the path east of the Erosion Control Line, within the protected dune system. The purpose of the consultation was to identify potential design concerns and minimize the number of Requests for Additional Information during the permitting process. Attachment A is the preliminary site plan submitted to FDEP on August 5, 2013.

FDEP commented that the path needed to be located further landward and the revisions should avoid impacts to the greatest extent possible. In the updated design the pathway has been relocated landward of the crest of the dune; avoids cutting into the dune; and avoids mature vegetation when possible.

FDEP requested that an impact minimization efforts and mitigation plan be submitted as part of the FDEP permit application. These efforts will include:

1. Relocating mature, native plants within the existing dune system;
2. Add fill to the crest of the dune;
3. Increase the seaward edge of the vegetated dune; and
4. Trim and/or limb-up seagrasses.

The 30% Construction Drawings will be completed by October 18th and the FDEP CCCL permit will be submitted the week of October 21st. The FDEP CCCL permitting process is estimated to take between 9 to 18 months to complete. The FDOT will be programming \$850,000 for construction funds in their FY2014/15. Construction is estimated to begin in 2015.

CONCLUSION

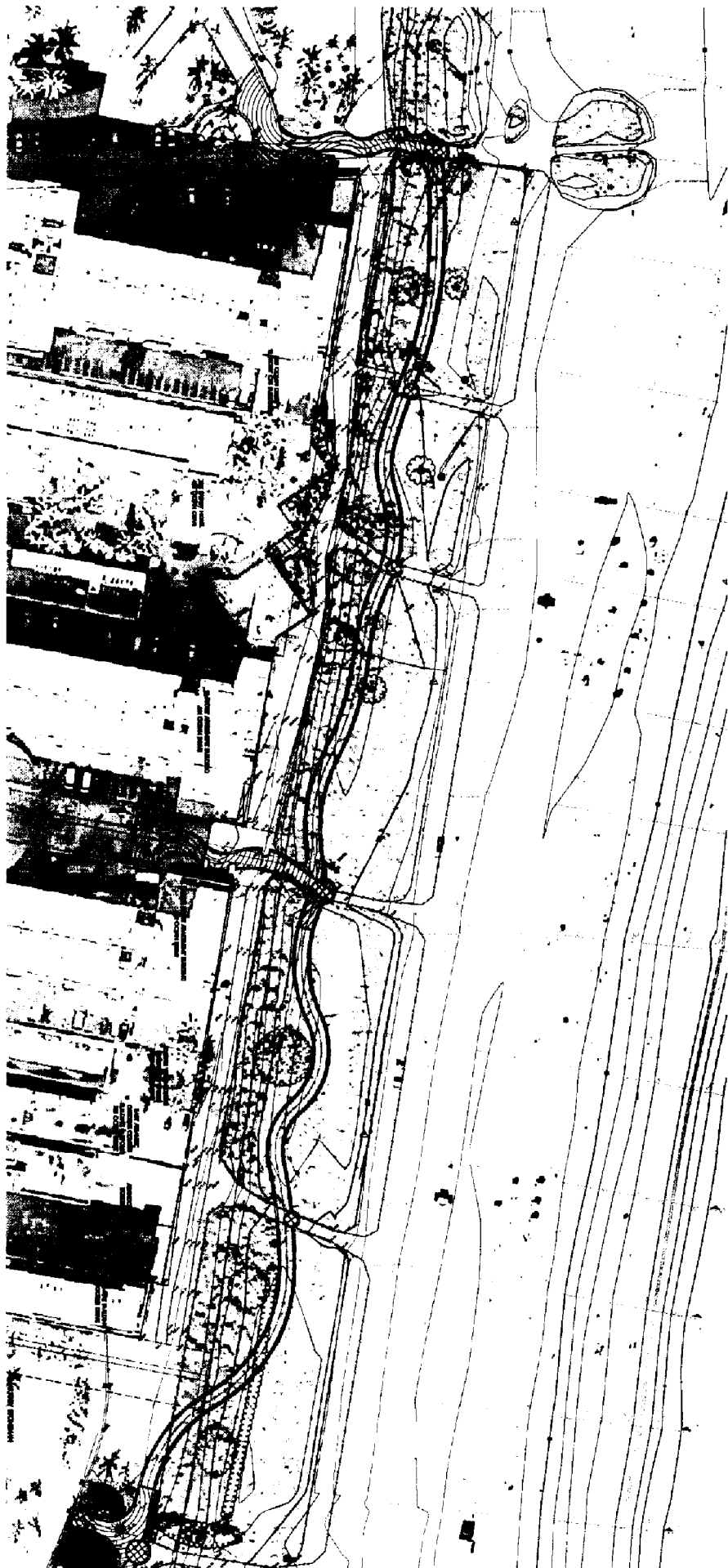
The above information is provided for discussion by members of the Neighborhoods and Community Affairs Committee.

Attachment: A – Preliminary Site Plan Submitted to on FDEP 8.5.13



WT/ETC/JJF/BAM/ESW

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NCAC#4

**d) DISCUSSION REGARDING UPDATING THE BIKEWAYS MASTER PLAN TO
BETTER INTERACT WITH THE CITY'S TRAFFIC CALMING PLANNING
(4:56PM)**

Kathie G. Brooks, Interim City Manager presented the item followed by a presentation by members from Street Plans.

Commissioner Libbin asked administration to encourage and obtain feedback from City residents.

Commissioner Exposito asked the presenters, based on their expertise, what the opinion was with regards to bicycles on collector versus non-collector roads. A Street Plan member responded stating that the challenge in Miami Beach is connectivity as most streets north to mid beach and South Beach are going to be collector arterial road-based and that it is a design challenge with which they are working with the county and FDOT to resolve.

Members from the public spoke.

Commissioner Tobin made a motion to negotiate this scope to do the revision to the AGN and to bring back to commission.

ACTION: The Committee (Commissioner Tobin, Gongora, Libbin and Exposito present) unanimously moved to bring this item to Commission.

**4. a) DISCUSSION REGARDING STATUS OF BEACH WALK FROM SUNRISE PLAZA
TO 4TH STREET.**

**b) STATUS UPDATE FOR THE BEACH WALK FROM SUNRISE PLAZA TO FIFTH
STREET. (4:30PM)**

Jay Fink, Public Works Assistant Director gave the status on the items, stating that project had two phases. Phase I is Sunrise plaza to 3rd street and Phase II is 3rd street to 5th street. The cost of the project is \$2.2 million, fully funded by the City.

The issue is to ensure that any future addition to any portion of the Beach Walk or Board Walk should have an elevation such that you can see the water.

Kathie G. Brooks also suggested that in the future, the Commission should be extraordinarily careful regarding putting anything in the dunes since they are the first line of defense against storms surges.

Linda Meners and Jeff Ringler spoke

Commissioner Exposito for NCAC and Commissioner Libbin from LUDC made the motion to move forward with the project, and report back in 60 days to the NCAC meeting, seconded by Commissioner Tobin for both committees.

ACTION: The Committee (Commissioner Tobin, Gongora, Libbin and Exposito present) unanimously moved to have this item discussed on 60 days at the NCAC meeting.

THE MEETING ADJOURNED AT 6:30 PM.

JLM/MAS/BH/jen

Neighborhood/Community Affairs Committee Meeting
October 28, 2013

Discussion Regarding The Possible Renaming Of 21st Street, From Miami Beach Drive To Washington Avenue, As "Collins Park South" And 22nd Street, From Miami Beach Drive To Dade Boulevard, As "Collins Park North"

*Commission Item C4I, September 11, 2013
(Requested by Mayor Matti Herrera Bower)*

Eric Carpenter, Public Works Director

ITEM #2



MIAMI BEACH

OFFICE OF THE CITY MANAGER

COMMITTEE MEMORANDUM

TO: Neighborhood/Community Affairs Committee

FROM: Jimmy L. Morales, City Manager

DATE: October 28, 2013

SUBJECT: **DISCUSSION REGARDING THE CO-DESIGNATION OF 21ST STREET AS COLLINS PARK SOUTH AND 22ND STREET AS COLLINS PARK NORTH**

This item was referred by Mayor Bower at the City Commission meeting on September 11, 2013.

BACKGROUND

At its June 18, 2013 meeting, the Collins Park Neighborhood Association (CPNA) passed a motion proposing the co-designation of 21st Street and 22nd Street between Washington Avenue and Miami Beach Drive as Collins Park South and Collins Park North, respectively. Since 22nd Street terminates into Washington Court, co-designation of Washington Court from Washington Avenue to 22nd Street would also be required to effectuate this request.

The CPNA is requesting this co-designation in preparation for the 100th anniversary of Collins Park in 2014 and to give more recognition and exposure to the neighborhood. The CPNA submitted the request to the City via the Mayor's office..

ANALYSIS

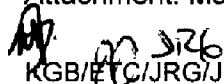
Article VI Section 82-503 of the current City code only allows for co-designation of streets in honor of Miami Beach police officers who died or were killed in the line of duty. It is worth noting that 21st Street is currently co-designated as Jose Marti Street. This co-designation was approved by the City Commission in 1994 (prior to the current code) via Resolution No. 94-21216.

If the City Commission wishes to remove the current co-designation of Jose Marti Street from 21st Street and pursue the co-designation of these three (3) streets as requested by CPNA, the following Commission action will be required: 1.) an amendment to the City code to allow co-designations of this type; and 2.) a five-sevenths (5/7) vote of the City Commission to approve the co-designation. A resolution of the Miami Beach City Commission recommending the co-designation would need to be submitted to Miami-Dade County Public Works and Waste Management Department for consideration by the Platting and Subdivision Committee. If approved by the County's Platting and Subdivision Committee, the item would have to be approved by the Miami-Dade County Board of County Commissioners via a resolution. Once the co-designation is approved by County Commission, the City would coordinate with the County to fund the cost of manufacturing and installation of the co-designated street name signs.

CONCLUSION

This item is being presented to the NCAC for direction.

Attachment: Map of requested Co-designation


KGB/ETC/JRG/JFD



Neighborhood/Community Affairs Committee Meeting
October 28, 2013

**Discussion Regarding The Disability Access Committee's Motion In Regards To
Alternative Leaf Blowers**

Commission Item C4M, September 11, 2013

(Requested By Commissioner Michael Gongora)

Hernan Cardeno, Code Compliance Department Director

ITEM #3

PRESENTATION AT COMMITTEE MEETING

Neighborhood/Community Affairs Committee Meeting
October 28, 2013

Discussion Regarding Water Taxi Proposal
Commission Item C4D, September 11, 2013

Max Sklar, Tourism and Cultural Development Director

ITEM #4



MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov

COMMITTEE MEMORANDUM

TO: Neighborhood and Community Affairs Committee
FROM: Jimmy L. Morales, City Manager
DATE: October 28, 2013
SUBJECT: **DISCUSSION REGARDING WATER TAXI PROPOSAL.**

BACKGROUND

A water taxi is a watercraft used to provide public transport, usually but not always in an urban environment. Service may be scheduled with multiple stops, operating in a similar manner to a bus, or on demand to many locations, operating in a similar manner to a taxi. Water taxis can offer sightseeing, charter and commuter services in order to service both residents and visitors.

The City is about to begin developing its Transportation Master Plan (TMP) which will study the City's transportation network, analyze existing conditions and make recommendations for projected future conditions. Multi-modal alternatives will be a component of the TMP and the City is seeking ways to maximize use of our Blueways. Additionally, The City's Comprehensive Plan already includes multi-modal alternatives as a goal.

The City Administration was recently approached by Island Queen Cruises with the attached proposal for the establishment of permanent locations in the City of Miami Beach in order to provide water taxi service between Bayfront Park and Miami Beach.

The City's Marine Authority Board also discussed this subject and passed a Resolution (attached) in January 2012 recommending the City develop water transportation services within the City and to mainland Miami for commercial and private vessels. The recommendation included development of a pier or dock at the Lincoln Road street end with potential for additional sites at 5th Street, 10th Street, 14th Street, and the Purdy Boat Ramp.

Aside from the attraction to tourist, water taxi service also has the ability to provide an alternative to residents who commute daily to and from Downtown Miami connecting various destinations in the City and on the Mainland.

REQUEST FOR PROPOSALS

If the Neighborhood and Community Affairs Committee and Members of the City Commission determine Water Taxi services, as an alternative mode of transportation, to be in the best interest of the City, the Administration recommends issuance of a Request for Proposals (RFP) soliciting proposals for the complete outsourcing of the water taxi services and dock operation management. The complete operation includes the maintenance, operation and/or oversight of transient slips, water taxis, customer care and dock use at designated public dock location(s). The operator will be responsible to construct all slips and docking facilities and manage same.

If the Purdy Boat Ramp location were included in the RFP as a dock location, the City could also consider including management of the Purdy Boat Ramp in the RFP. Use of the Purdy Boat Ramp has a history of challenges between commercial operators and non-commercial users that continue to be problematic and this RFP, if desired, could be the solution.

CONCLUSION

At this time, the Administration is seeking direction from the Neighborhoods and Community Affairs Committee before proceeding further.

JLM/KGB/MAS

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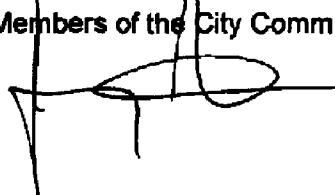


MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov

COMMISSION MEMORANDUM

TO: Mayor Matti Herrera Bower and Members of the City Commission

FROM: Jimmy L. Morales, City Manager 

DATE: September 11, 2013

SUBJECT: **REFERRAL TO NEIGHBORHOODS AND COMMUNITY AFFAIRS COMMITTEE FOR A DISCUSSION REGARDING WATER TAXI PROPOSAL.**

ADMINISTRATION RECOMMENDATION

Refer discussion to the Neighborhoods and Community Affairs Committee.

BACKGROUND

The City Administration was approved by Big Bus tours and Island Queen Cruises with the attached proposal for the establishment of permanent locations in the City of Miami Beach in order to provide water taxi service between Bayfront Park and Miami Beach. At this time, the Administration is seeking direction from the Neighborhoods and Community Affairs Committee before proceeding with further discussions and/or negotiations.

CONCLUSION

The Administration recommends referring discussion of a proposed water taxi service to the Neighborhoods and Community Affairs Committee.

JLM/KGB/MA/SF

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Agenda Item C4D
Date 9-11-13

TEW • CARDENAS LLP
ATTORNEYS AT LAW

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June 13, 2013

VIA HAND DELIVERY

Kathie G. Brooks, A.I.C.P.
Assistant City Manager
City of Miami Beach
1700 Convention Center Drive
4th Floor
Miami Beach, FL 33139

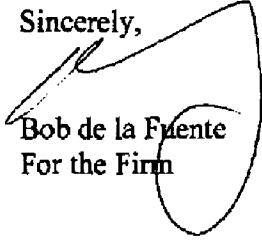
Re: *Big Bus Water Taxi: Big Bus Tours & Island Queen Cruises*
Our File No.: 83955.002

Dear Kathie:

It was a pleasure seeing you the other day. Pursuant to our meeting, we are forwarding you the following information: (i) Map of proposed routes; (ii) Concession Agreement by and between Bayfront Park Management Trust and Conway Tours; (iii) Endorsement letter from Bayfront Park Management Trust Executive Director; (iv) Summary of proposal from Big Bus Tours to Bayfront Park Management Trust and the City of Miami; and (v) Ft. Lauderdale Water Taxi information.

Please contact us with any questions you may have. We look forward to meeting with you again after you've had a chance to review these materials.

Sincerely,


Bob de la Fuente
For the Firm

Encl.

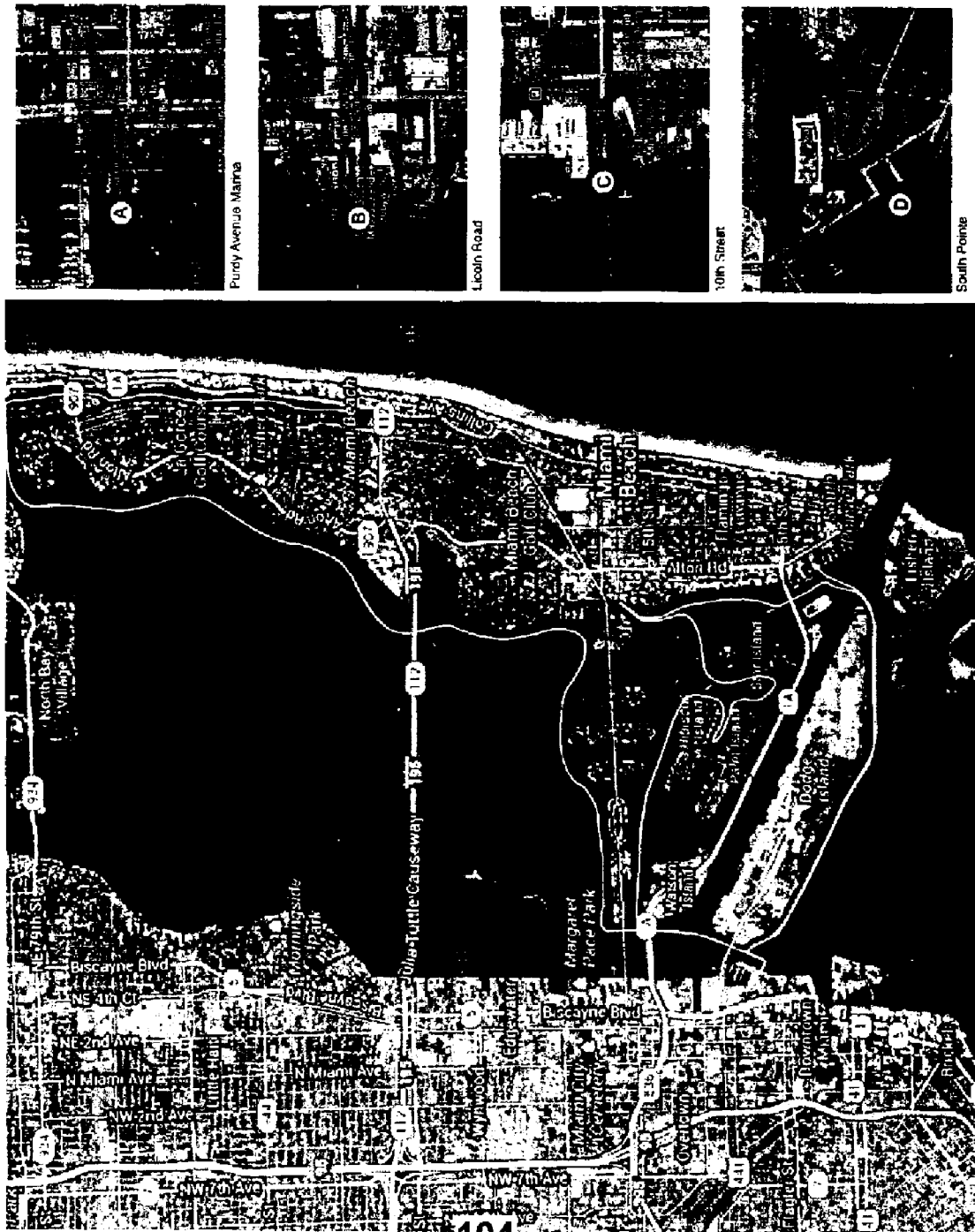
cc: Julia M. Conway (via e-mail, w/out encl.)
Mike Simpson (via e-mail, w/out encl.)
Albert Ballido (via e-mail, w/out encl.)
J.C. Planas, Esq. (via e-mail, w/out encl.)

MIAMI:577018.1

Map Ledger

- (A) Purdy Avenue Marina
This would require bridge opening every time.
- (B) Lincoln Road
This is the most ideal pick up spot
- (C) 10th Street
This is the 2nd most ideal pick up spot
- (D) South Point
This spot has a lot of rough water concerns due to boat traffic and their wakes.

Existing Route A
Existing Route B
Proposed Route A
Proposed Route B



GRAYLINE CONCESSION LICENSE AGREEMENT

This Concession License Agreement (the "Agreement"), made this 4th day of JUNE, 2012, by and between the Bayfront Park Management Trust (the "Trust"), a limited agency and instrumentality of the City of Miami, a municipal corporation of the State of Florida, (the "City"), and Conway Tours a Florida limited liability company (the "Concessionaire").

RECITALS:

Whereas, the City Manager is authorized to enter into agreements to grant concession privileges to concessionaires for concession services in the City's parks; and

Whereas, pursuant to Chapter 38, Article III of the City of Miami Code, the Trust has been empowered to direct, operate, manage and maintain all aspects of Bayfront Park ("Park"); and

Whereas, the Trust's purpose is to ensure maximum community utilization of the Park; and

Whereas, pursuant to Chapter 38, Article III, the Trust's Executive Director is authorized to manage and operate the Park; and

Whereas, the Trust recognizes that in order to attract more persons to the Park and maximize community utilization, it must enter into agreements with companies to provide services to the public for their increased enjoyment of the Park; and

Whereas, the Trust, in its efforts to maximize community utilization and enjoyment of the Park, has entered into previous concession agreements for services to be provided to the public in the Park; and

Whereas, the Trust desires to have tour bus and transportation services ("the Concession") service the Park, which in-turn will attract more City residents and tourists to the Park while improving their access to and enjoyment of the park; and

Whereas, the Trust issued a Request for Proposals -- No. 263248 -- (the "RFP") for Concessions/Food/Merchandise Plan and Operations for Bayfront Park, requesting proposals from companies to establish a contract, for Concessions/Food/Merchandise Plan(s) and Operation(s) for City of Miami's Bayfront Park who will provide a guaranteed income to the Trust as a result of the Concession; and

Whereas, the Concessionaire's proposal (the "Proposal") has been selected as among the top-ranked proposals to provide the Concessions/Food/Merchandise Plan and Operations for Bayfront Park, and was selected as among the most qualified firm with whom to negotiate a contract; and

Whereas, the Trust, at its June 21, 2011, board meeting, accepted the recommendation of the Evaluation committee to authorize the Executive Director to enter into negotiations with the three respondents to the RFP for an agreement; and

Whereas, the Concessionaire is willing and able to manage and operate such Concession in the Park based upon the terms and conditions contained herein; and

Whereas, the Trust unanimously passed a motion on December 22, 2011, authorizing the Executive Director to execute a concession license agreement, under the terms and conditions set forth herein; and

Whereas, the City Commission, by Resolution No. 12-0072, adopted on March 8, 2012, authorized the Executive Director to enter into a concession license agreement, under the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereafter set forth, the receipt and sufficiency of which are hereby acknowledged, to be kept and performed by the parties, it is agreed between the Trust and the Concessionaire as follows:

ARTICLE I DEFINITIONS

For the purpose of this Agreement, the terms defined in this Article shall have the meanings set forth below.

"Additional Fees" shall mean all other charges and payments payable by the Concessionaire to the Trust in addition to the Concession Fee, percentage of tickets sold at concession venue, Returned Check Fee and, but shall not include the Security.

"Additional Term" shall have the meaning set forth in Section 2.3 hereof.

"Agreement" shall have the meaning set forth in the preamble.

"Area" shall mean all portions of the Park, including, but not limited to, the Concession Area, that are used by the Concessionaire for its operations pursuant to this Agreement.

"Army Corps" shall mean the United States of America, U.S. Army Corps of Engineers.

BPMT/ Big Bus Tours 2012 Concession License Agreement

"City" shall have the meaning set forth in the preamble.

"City Commission" shall mean the City of Miami Commission.

"Commencement Date" means the date that the Concession shall be open for business and is further defined in Article III entitled "Term."

"Complimentary Tickets" shall mean those tickets not transferring or exchanging the absolute or general ownership of property from one person or corporate body to another for a price, as a sum of money or any other consideration and does not involve a transfer of title or possession, or both, exchange, barter, license, lease or rental, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for a consideration.

"Concession" shall mean the provision of tour bus and transportation services as outlined in attached plan.

"Concession Area" shall mean the area within the Park that is designated for the operation of the Concession on Attachment B, attached hereto and made a part of the Agreement.

"Concession Agreement Year" shall mean a consecutive twelve (12) month period during the Term and each Additional Term, if exercised, commencing on the Commencement Date.

"Concession Fee" shall mean the all payments made to the Trust for the right to operate the concession in the Park and is further determined in section 4.1(a) hereof.

"Concession Manager" shall mean the Concessionaire's manager or assistant manager on duty.

"Concessionaire" shall have the meaning set forth in the preamble.

"Concessionaire Administrator" shall mean the person(s) authorized by the Concessionaire to act fully on behalf of the Concessionaire in managing the Concession as required by this Agreement.

"Deposit" shall have the meaning set forth in Section 7.1 hereof.

"Event Days" shall mean the days or nights in which there are events and activities that occur in the Park.

"Executive Director" shall be the Trust's Executive Director who is authorized to administer the Agreement and coordinate the activities of the Concessionaire at the Park.

"Gross Revenues" shall mean the aggregate amount of all revenues including taxes, prior to payment of commissions, derived from all ticket sales collected at venue, arising or accruing by virtue of managing and operating the Concession, whether such revenues shall be credit or cash or otherwise, and shall include any finance charges or similar payments received by the Concessionaire as a result of the Concession.

"Hazardous Materials" shall have the meaning set forth Section 10.1 hereof.

"Hazardous Materials Laws" shall have the meaning set forth in Section 10.1 hereof.

"Hazardous Conditions" shall mean the conditions that occurred as a result of noncompliance with the Hazardous Materials Laws.

"Improvements" shall mean any building, structure, construction, demolition, excavation, landscaping, or any part thereof existing, built, erected, placed, made, or done within the Park for its permanent benefit.

"Indemnitees" shall mean the City, the Trust and the Army Corps, and their officials, employees, agents and volunteers, collectively.

"Liabilities" shall have the meaning set forth in Sections 12 and 13 hereof.

"Modifications" shall mean nonpermanent, removable alterations, major repairs, modifications, additions, partitions or changes, including trade fixtures placed in the Park by Concessionaire for the Concession pursuant to this Agreement.

"Operating Hours" shall mean the hours in which the Concession shall be open and available for operations as further defined in the Management and Operations Plan.

"Operations Plan" shall mean the Management and Operations Plan for the Concession, which is attached hereto as Attachment C and which is made a part of this Agreement, as amended from time to time with the prior written approval of the Executive Director.

"Park" shall have the meaning set forth in the preamble.

"Proposal" shall have the meaning set forth in the preamble.

"Returned Check Fee" shall have the meaning set forth in Section 4.6 hereof.

"RFP" shall have the meaning set forth in the preamble.

"Sale," "Sell" or "Sold" shall mean the act of transferring the absolute or general ownership of property from one person or corporate body to another for a price, as a

sum of money or any other consideration, as distinguishable from a gift, and includes any transfer of title or possession, or both, exchange, barter, license, lease or rental, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for a consideration.

"Security" shall mean the financial security for the payment and performance by the Concessionaire of all of the Concessionaire's obligations, covenants and conditions pursuant to this Agreement.

"Solicitation Documents" shall mean the RFP and the Proposal, which are by this reference incorporated into and made a part of this Agreement, as Attachment A.

"Sponsor" shall be any person or corporate entity which purchases name placement, logo placement, advertising, and other forms of sponsorship, from Concessionaire, or its agents or subcontractors, as a result of or in connection with the Concession.

"Subcontractor" or "Agent" shall mean any individual, partnership or corporation who is contractually bound to the Concessionaire to perform a specific portion of the total work package under this Agreement.

"Tax" shall mean any and all taxes, fees, costs, assessments or fines assessed by a municipal, county, state or federal agency that is assessed against the Concession, its operations, personal property of any kind, owned by or placed in, upon or about the Concession Area by the Concessionaire, or arising as a result of the Trust entering into this Agreement, whether assessed against the Concessionaire, the City or the Trust.

"Term" shall have the meaning set forth in Section 2.1 hereof.

"Termination Date" shall mean the day on which this Agreement expires or such earlier date as may be specified in accordance with the provisions of this Agreement.

"Trust" shall have the meaning set forth in the preamble.

"Trust Fee" shall mean the aggregate of the Concession Fee that the Concessionaire shall pay to the Trust, as applicable.

"Trust's Tickets" shall mean the number of Complimentary Tickets that the Concessionaire shall give to the Trust annually.

"Unavoidable Delay" means damage or destruction by fire or other casualty, whether similar or dissimilar, acts of federal, state, county and/or city governments, including acts pertaining to strikes, embargoes, shortages of material or labor, labor troubles or labor disputes, force majeure, unusually adverse weather conditions, or other like or unlike events or conditions beyond the control of the parties hereto.

BPMT/ Big Bus Tours 2012 Concession License Agreement

including any court actions, and injunctions by third parties, which results in impossibility of performance.

ARTICLE II TERM

2.1 TERM. The term of this Agreement shall be for a period of five (5) years from the Commencement Date (the "Term"), unless earlier terminated or extended as provided herein.

2.2 COMMENCEMENT DATE. Within one hundred eighty (180) days after the City Commission and Trust approval of the terms and conditions of the Agreement, Concessionaire shall obtain all of the licenses and permits necessary for the operation of the Concession. Concessionaire shall send written notice to the Executive Director of the date that the Concession shall open for business. The Executive Director shall be able to extend the one hundred eighty (180) day period for an additional one-hundred twenty (120) days with Trust approval.

2.3 OPTION. This Agreement may be extended for two (2) additional five-year periods upon the same terms and conditions contained herein (each "Additional Term"). In order to exercise this extension, the Concessionaire must deliver written notice of its intent to the Trust six (6) months in advance of expiration of the Term or Additional Term, but no earlier than nine (9) months prior to the expiration of the Term or Additional Term. Upon receipt of such notice, the Trust may conduct an audit of the Concessionaire's compliance with the provisions of this Agreement. If the Trust determines that the Concessionaire is in compliance with all of the provisions of this Agreement, then the Agreement may be extended for an Additional Term. Should a compliance audit reveal a default in performance, such as underpayment of any amounts due from the Concessionaire, such default shall not be a basis to deny an extension of this Agreement, provided that any such default is cured within thirty (30) days of notice from the Trust. Regardless of the provisions above, habitual non-compliance with this Agreement by the Concessionaire shall be grounds for denial of an Additional Term by the Trust.

ARTICLE III CONCESSION

3.1 DESCRIPTION OF CONCESSION. The Concessionaire shall provide the services further described herein, subject to the exceptions and conditions hereinafter set forth, for purposes of providing the Concession in the Park within the terms and conditions of the Management and Operations Plan, attached hereto as Attachment C and is incorporated and made a part of this Agreement.

The Trust and the City reserve the right to enter the Concession Area or any portion of the Park. Any such entry shall be performed in a reasonable manner and to minimize any disruption to the Concessionaire's operation.

BPMT/ Big Bus Tours 2012 Concession License Agreement

The Concessionaire shall not use the Concession Area or any other portion of the Park for any purpose other than herein specifically designated without prior written consent of the Trust.

3.2 NATURE OF CONCESSION. This Agreement solely authorizes the Concessionaire to provide services as set forth herein for the purposes set forth herein and for no other purpose. The parties hereby agree that the provisions of this Agreement do not constitute a lease. The rights of the Concessionaire hereunder are not those of a tenant, but are a privilege to do certain acts of a limited character within the Park and to use the Park subject to the terms of this Agreement. The City, the Trust and the Army Corps retain dominion, possession and control of the Park. Therefore, no lease interest, or any other interest in property in the Park, is conferred upon the Concessionaire under the provisions hereof. The Concessionaire does not and shall not claim at any time any interest or estate of any kind or extent whatsoever in the Park by virtue of this Agreement or its use of Concession Area, or any other portion of the Park, hereunder. Additionally, the Concessionaire does not and shall not claim at any time any interest or estate of any kind or extent whatsoever in the Concession Area by virtue of any expenditure of funds by the Concessionaire for any Modifications, which may be authorized by the City or the Trust. The Concessionaire may place Modifications in the park for the management and operation of the Concession, with prior Trust approval. Such modifications may include, but are not limited to, a removable non-permanent structure(s) for ticket sales and information. The parties agree that Concessionaire's equipment that may be placed or installed in the Concession Area are not Improvements, but are equipment which shall be removed in accordance with the restoration of the Park provisions contained in Section 19.4 hereof.

The Concessionaire and its employees shall comply with all Trust rules and regulations governing access to and conduct in the Park.

3.3 CONCESSION AREA. The Concessionaire hereby accepts the Concession Area "as is" and "where is," and any other portion of the Park that may be utilized pursuant to this Agreement, except that Section 8.1 shall apply hereto. The Concessionaire shall not remove any of the City's or the Trust's Improvements, fixtures or personal property from the Park without the prior written consent of the Executive Director.

The Concessionaire shall, at its sole cost and expense, be responsible for the operation, cleaning, preventative maintenance and reasonable care and repair of all the Improvements, fixtures and personal property that it uses for the Concession. The Concessionaire shall replace or repair, at its sole cost and expense, any of those items provided by the Trust, or the City, that are lost, damaged or destroyed due to the acts, omissions or negligence of the Concessionaire or its Agents or employees.

3.4 CONCESSION AREA DESIGN. The Concessionaire recognizes the importance of a consistent design to all elements in the Park, and therefore agrees to ensure that

the design elements at the Concession are consistent with the other components of the Park, subject to written approval by the Trust's executive director or designee.

3.5 INSTALLATION OF MODIFICATIONS: The Concessionaire shall furnish and install, at its own expense, the equipment and personal property necessary to manage and operate the Concession. Within sixty (60) days of execution of this Agreement, the Concessionaire shall provide the Executive Director with its plans for the Modifications for the Concession. Within ninety (90) days of execution of this Agreement, the Concessionaire shall have a plan for the Modifications, approved by the Executive Director. During this ninety-day period, the Executive Director shall have seven (7) calendar days to approve modifications or request modifications to Concessionaire's plans for the Modifications. If the Executive Director requests modifications, the Concessionaire has thirty (30) days thereafter to submit revised plans. Within one hundred twenty (120) days after the Executive Director sends notice of the approval of the Modifications, the Concessionaire shall begin and continuously pursue to install Modifications in the Concession Area. The Executive Director shall grant further extensions for good reason, which shall not exceed an aggregate of one hundred eighty (180) additional days from the Concessionaire's initial submission of its plans to the Executive Director.

3.6 CONCESSIONAIRE RESPONSIBILITIES. The Concessionaire covenants and agrees that the Concessionaire shall, at its sole cost and expense, operate, manage and maintain the Concession and provide the Concession required under this Agreement and specifically agrees as follows:

A. The Concessionaire shall, at its sole cost and expense purchase, lease or finance all equipment and supplies and materials necessary for the operation of the Concession.

B. The Concessionaire shall, at its sole cost and expense, provide telephone service for its own use, and/or any other utility needed.

C. The Concessionaire shall be responsible for security of the Concession Area. The Concessionaire shall insure that all appropriate equipment has been turned off and appropriate doors locked at the close of operation within the Concession Area each day. The lights in the Concession Area may remain lit to provide illumination for the Concessionaire's signs and for security purposes but the Concessionaire shall turn off all other lights that are not needed after hours for these purposes.

D. The Concessionaire shall provide the Executive Director with the contact names and contact numbers of the Concessionaire Administrator that will be available at any time to call in the case of emergencies. These individuals must be available by phone twenty-four (24) hours a day, seven (7) days a week. Initially the Concessionaire Administrators will be Julia M. Conway, CEO and Jon Bono, Operations Manager.

E. The Concessionaire shall train all employees to respond to emergencies.

F. The Concessionaire shall include the organization chart listing the employee titles in its Operations Plan.

G. The Concessionaire shall assume all costs of the Concession including, but not limited to, security, staffing and maintenance of the Concession Area.

H. The Concessionaire shall be responsible for the provision, installation, repair and preventive maintenance of all equipment necessary to operate the Concession and keep the Concession Area in good repair.

I. The Concessionaire shall be responsible for making Modifications required for the safe operations of the Concession.

3.7 OPERATION OF CONCESSION. Starting on the Commencement Date, the Concessionaire shall begin operating the Concession, within the Concession Area, in accordance with the Operations Plan. The Concessionaire shall operate the Concession seven days a week subject to the terms and conditions of this agreement. Nothing contained herein shall cause the operation of the service in unsafe weather conditions.

Further, the Executive Director may request temporary amendment to the Concession's hours of operation for Event Days, during a state of emergency, or for other governmental purposes, and the Concessionaire agrees to accommodate such requests. In the event that access to the Concession Area is restricted by the Trust or City for non-emergency governmental purposes, and which requires closure of the Concession, the Concessionaire shall be entitled to a pro-rated abatement of any Concession fee which may be due to the Trust pursuant to the terms of this Agreement. For purposes of this Agreement, "closure" shall be defined as a period of four consecutive hours or more during one 24 hour period, and shall result in an abatement of one day payment of the Concession Fee.

A. Event Days: The Concessionaire recognizes that events are regularly scheduled in the Park and may be required to close for the duration of the event.

B. State of Emergency/Hurricanes: The Concessionaire recognizes that emergencies, both weather related and non-weather related may arise, which would limit access to the Concession Area.

3.8 QUALITY AND PRICE CONTROL. The Concessionaire shall operate the Concession in the Park in a first class manner. The Concessionaire shall send the Trust's Executive Director its list of prices. The Concessionaire's retail prices shall be plainly displayed in the Concession Area.

3.9 SANITATION The Concessionaire shall, at its sole cost and expense, maintain and keep fixtures, equipment, personal property, whether owned by the Concessionaire or third parties, the Concession Area and any other Area(s) that may be designated by the Trust for Concessionaire's use, in a clean and sanitary condition satisfactory to the Trust. The Concessionaire shall manage and operate the Concession in strict compliance with all applicable federal, state and local laws and regulations governing this type of operation. In the event of an inspection the Concessionaire shall obtain and maintain a satisfactory rating on all government inspections. The Concessionaire shall provide copies of each inspection report to the Executive Director within two (2) business days of receipt of the same by the Concessionaire.

The Concessionaire shall make separate arrangements, at its sole expense, for the disposal of the trash and garbage from the Concession. The Concessionaire shall, at its sole cost and expense, provide a sufficient number of trash and garbage receptacles within the Concession Area and other Areas designated for its use and for use by invitees. The Concessionaire shall, at its sole cost and expense, be responsible for the disposal of such receptacles and the removal of trash and garbage from the Concession Area utilizing acceptable environmental techniques and canisters.

The Concessionaire's employees handling Hazardous Waste must be trained in the handling of Hazardous Waste. Concessionaire shall not dispose of any Hazardous Waste in the Park.

3.12 UTILITIES. The Concessionaire shall be solely responsible for the cost and expense, to furnish air conditioning, heat, hot and cold water, lights, electric current, sewage, gas, and utilities and shall have installed metering devices which measures the Concession's usage of utilities. The Concessionaire must abide by the rules, regulations, schedules and practices that may be set forth by the Trust, in its reasonable discretion.

When necessary to protect the health, safety and welfare of the Park and the public, including, but not limited to, reason of accident, emergency or for any other cause beyond the reasonable control of the Trust, the Trust reserves the right to interrupt, curtail or suspend the provision of any utility service, including but not limited to, heating, ventilating and air conditioning systems and equipment serving the Concession Area, to which the Concessionaire may be entitled hereunder. The Trust shall in no respect be liable for any failure of the utility companies or governmental authorities to supply utility service to the Concessionaire nor for any limitation of supply resulting from governmental orders or directives. No diminution or abatement of the Concession Fee or other charges, nor damages, shall be claimed by the Concessionaire by reason of the Trust, or other person or entity's interruption, curtailment or suspension of a utility service, nor shall this Agreement or any of the Concessionaire's obligations hereunder be affected or reduced thereby. Provided, however, that should there be a disruption of utility services which is out of the Concessionaires control and results in closure of the Concession for more than forty eight (48) hours, then such occurrence shall be treated as an Unavoidable Delay. In the

event that the Trust interrupts, curtails or suspends the provision of any utility service serving the Concession Area, the Trust will take reasonable efforts to restore such service within a reasonable time and manner. The Concessionaire shall make all reasonable efforts to mitigate its damages.

3.13 PARKING. The Trust will not provide parking spaces for the Concessionaire within the Park.

3.14 TRUST ACCESS TO FACILITY. The Trust, the City and the Army Corps, and their authorized representative(s), shall have access at all times to the Concession Area or any other Area in the Park that may be used by the Concessionaire. The Concessionaire shall immediately provide keys to the Trust for any new equipment or key changes. Changes to the locks must be reported to the Executive Director. The Concessionaire shall immediately provide any new keys to the Executive Director.

Trust access may include, but is not limited to, entering into the Concession Area for repairs, alterations or Improvements which, in the judgment of Trust, may be desirable or necessary to be made to the Park. The work of such repairs, alterations or Improvements shall be completed by the Trust or its agents with reasonable diligence. The Trust shall make its best efforts not to interfere with the operation of the Concession.

3.15 PERMITS AND LICENSES. The Concessionaire, at its sole cost, shall obtain any and all permits and licenses required for the Concession's operations.

The Concessionaire represents and warrants to the Trust as of the Commencement Date that: (i) it possesses all qualifications, licenses and expertise required under the Agreement for the performance of, management of and operation of the Concession; (ii) it is not delinquent in the payment of any sums due to the City, including payment of permit fees, occupational licenses, etc., nor in the performance of any obligations to the City; (iii) all personnel assigned to perform the Concession are and shall be, at all times during the term hereof, fully qualified and trained to perform the tasks assigned to each; and (iv) the Concession will be performed in the manner described in the Operations Plan.

3.16 PERFORMANCE REVIEW MEETINGS. The Concessionaire Administrator and the Executive Director, or designee, will schedule meetings every ninety (90) days after the Commencement Date, to review all aspects of the Concessionaire's performance under this Agreement. The Concessionaire shall present to the Executive Director operational issues, existing programs, ideas for new programs, any operational improvements, the visitor count and ideas for coordinating the Events.

3.17 PROMOTIONAL MATERIAL. All of the Concessionaire's marketing material shall include either "Bayfront Park" or "Bayfront Park Management Trust" and its address, 301 N. Biscayne Blvd. Miami, Florida 33132, in a manner that can be reasonably seen on the material.

**ARTICLE IV
CONSIDERATION AND PAYMENTS**

4.1 TRUST FEE. The Concessionaire agrees to pay the Trust an aggregate Trust Fee, in the manner and upon the conditions hereinafter provided:

(a) a Concession Fee during each Concession Agreement Year, including any extension hereof, in an amount equal to \$36,000 annually (the "Concession Fee"), which shall be paid in equal monthly payments of \$3,000. In subsequent years, the Concession Fee shall increase in accordance with increases with the Consumer Price Index (CPI) or by 3%, whichever amount is greater. The CPI shall be determined by the last 12 month unadjusted percentage change in the Consumer Price Index calculated by the Bureau of Labor Statistics of the U.S. Department of Labor for the South Florida region. Concession Fee is subject to State of Florida Sales Tax, currently at 7%.

- (b) 5% of Ticket revenue originating in Park
- (c) Returned Check Fee; and
- (d) all Additional Fees

4.2 PAYMENTS OF THE TRUST FEE. Payment of the Trust Fee shall be as follows:

| Trust Fee | When Start | When Payment Due |
|---|--|--|
| Concession Fee | Upon Commencement Date | Unless provided herein, all Fees shall be paid within the first seven days following the end of the calendar month during which such payment accrued. |
| 5% of Ticket revenue, as defined in Gross Revenue | Commences ten (10) months after date of execution. | Unless provided herein, all Fees shall be paid within the first seven days following the end of the calendar month during which such payment accrued. |
| Additional Fees | Date of execution | Unless provided herein, all Additional Fees shall be paid within the first seven days following the end of the calendar month during which such payment accrued. |

Within seven (7) business days after the end of each calendar month, the Concessionaire shall deliver to the Trust a written report of its ticket sales for the Concession for the preceding calendar month. The report shall be signed by the Concessionaire Administrator certifying the accuracy of such ticket sales, and shall also

be accompanied by statements signed and certified by the Concession's Administrator. Said statements must include daily sales by category.

4.3 INTEREST ON LATE PAYMENTS. Any payment made by the Concessionaire for any fees or charges as required to be paid under the provisions of this Agreement, which is not received by the Trust within ten (10) business days after same shall become due, shall be subject to interest at the prime interest rate which shall be imposed starting on the thirty-first day after such payment is due until such time as the payment is actually received by the Trust.

4.4 OVERPAYMENT AND UNDERPAYMENT. In the event that the Concessionaire can demonstrate, by generally accepted accounting principles, that it has made an overpayment in the Trust Fee, the Trust shall refund such overpayment to the Concessionaire. If the Concessionaire has made an underpayment in the Trust Fee, then said underpayment shall be paid to the Trust. Overpayments and underpayments shall be paid within thirty (30) days after the overpayment or underpayment, as the case may be, has been determined.

4.5 TRUST'S TICKETS. Within thirty (30) days of commencement of each Concession Agreement Year, the Concessionaire shall provide the Trust with one hundred (100) Complimentary Tickets to the Concession per year.

4.6 RETURNED CHECK FEE. In the event that any Trust Fee is returned as uncollectible, the Concessionaire shall pay to the Trust a returned check fee equal to that charged by the bank; currently in the amount of thirty five dollars (\$35). The "Returned Check Fee" is due upon notice of the Trust's receipt of the unpaid item.

4.7 FORMS OF PAYMENT. Payments shall be made to the Bayfront Park Management Trust, 301 N. Biscayne Blvd., Miami, Florida 33132, on the date that payments are due. Payments shall be in the form of company checks, cashiers check, money order, or wire transfers. Payments shall not be tendered in the form of cash.

ARTICLE V PERSONNEL

5.1 PERSONNEL. The Concessionaire shall, at its own expense, provide adequate staff for the provision of the Concession, trained in the management and operation of the Concession. The Concessionaire's staff shall provide courteous, efficient and sanitary service to the invitees.

The Concessionaire agrees to furnish its personnel with identification required for entrance to or exit from the Concession Area during normal work hours.

5.2 CONCESSIONAIRE ADMINISTRATOR AND MANAGER(S). The Concessionaire Administrator shall be responsible for daily oversight of the Concession as specified in this Agreement. The Concessionaire may also have a Concessionaire

Manager(s) who shall be on-site during all hours that the Concession is open. The Concessionaire's Manager(s) must have experience in a similar operation with comparable responsibilities.

5.3 PERSONNEL TRAINING. The Concessionaire shall have adequately trained personnel to maintain a high quality Concession. The Concessionaire shall ensure that critical positions (those that are necessary to open and operate the Concession Area) will have adequate back-up employees on-call to cover for absenteeism. The Concessionaire shall require employees to comply with all instructions, rules and regulations of the Trust regarding the Park operations.

5.4 LABOR RELATIONS. The Concessionaire shall be responsible for its own labor relations with any trade or union representative among its employees and shall negotiate and be responsible for adjusting all of the disputes between itself and its employees or any union representing such employees.

Whenever the Concessionaire has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of the Concession, the Concessionaire shall immediately contact the Executive Director by phone and provide written notice of the dispute.

ARTICLE VI NONDISCRIMINATION

6.1 NONDISCRIMINATION. The Concessionaire agrees that there will be no discrimination against any person based upon race, religion, color, sex, ancestry, age, national origin, or mental or physical handicap, while providing the Concession or within the Concession Area. An allegation of discrimination shall not be deemed a violation of this provision until there is a final determination by a court of competent jurisdiction that discrimination has occurred. If such determination is made by a court, and all appellate review has been exhausted, then the Concessionaire shall take reasonable actions to eliminate the conditions which were determined to be the cause of the discriminatory act(s).

ARTICLE VII DEPOSIT

7.1 SECURITY. Security shall consist of a Security Deposit.

7.2 DEPOSIT. The Concessionaire shall deposit with the Trust the sum of \$9,000 equal to three (3) months concession Fee as a security deposit (the "Deposit"). At least one-half (1/2) of the Deposit, or an amount not less than \$4,500, shall be paid within five

(5) days after the Agreement is approved by the City Commission, with the remaining balance payable no later than five (5) days prior to Concessionaire's placement of any equipment, Modifications, or any personal property on the Park, necessary to manage and operate the Concession. The Deposit shall not be deemed liquidated damages but shall be used for damages to the Park and for restoration of the Concession Area in accordance with Section 19.4 hereof and non-monetary defaults not directly associated with the nonpayment of the Trust Fee. The Deposit shall be held in an interest bearing account in a financial institution as determined by the Trust. All interest accruing on the Deposit shall be for the benefit of the Concessionaire and made payable to Concessionaire on a yearly basis.

In the event that there are damages to the Park as a result of the Concession, the Executive Director shall send written notice to the Concessionaire to repair such damages. Concessionaire shall commence and continuously prosecute the repair of such damages within thirty (30) days of the Executive Director's notice. If Concessionaire fails to commence such repairs within such time, the Executive Director shall apply the Deposit towards the payment of such repairs. Concessionaire shall be liable for the cost of such repairs and application of Deposit to reduce damages to the Park shall not preclude the Trust from recovering from Concessionaire all additional damages incurred by the Trust to the extent permitted under this Agreement.

7.3 REPLINISHMENT OF SECURITY. The Trust shall have the right to apply all or any portion of the Security to cure a default in accordance with Sections 7.2 and 7.3. In the event that the Trust applies the Security, or a portion thereof to cure a default, the Concessionaire shall promptly, within five (5) business days, deposit with the repository of the funds for the Security¹, the amount necessary to restore the Security to its original amount. Failure to replenish the Security within five (5) business days shall result in termination of this Agreement by the Trust. Application of the Security to reduce the Trust's damages shall not preclude the Trust from recovering from the Concessionaire all additional damages incurred by the Trust.

7.4 RETURN OF SECURITY. If the Concessionaire fully and faithfully complies with all of the terms, provisions and conditions of the Agreement, the Security shall be returned to the Concessionaire after both: (i) the expiration of the Term, as may be extended pursuant to the provisions of this Agreement, and (ii) the Concessionaire's delivery to the Trust of the entire Concession Area in the same condition or better than existed on the Commencement Date, except for ordinary wear and tear and the restoration of the park as provided in Section 19.4 hereof. The Trust shall have fifteen (15) days from the time the Concessionaire vacates the Concession Area to notify the Concessionaire, in writing, of any damages to the property. The Concessionaire shall have thirty (30) days from receipt of notice to cure the damage. If Concessionaire does not cure the damage, then the Trust shall be entitled to apply funds from the Security towards the cost of such repairs, and the balance of the security shall be returned to Concessionaire.

ARTICLE VIII HAZARDOUS MATERIALS

8.1 ENVIRONMENTAL WARRANTY. The Concessionaire shall, at its sole cost and expense, at all times and in all respects comply with all federal, state and local laws, statutes, ordinances and regulations, rules, rulings, policies, orders and administrative actions and orders ("Hazardous Materials Laws"), including, without limitation, any Hazardous Materials Laws relating to industrial hygiene, environmental protection or the use, storage, disposal or transportation of any flammable explosives, toxic substances or other hazardous, contaminated or polluting materials, substances or wastes, including, without limitation, any hazardous substances, hazardous wastes, hazardous materials or toxic substances, under any such laws, ordinances or regulations (collectively "Hazardous Materials"). The Concessionaire shall, at its sole cost and expense, procure, maintain in effect and comply with all conditions of any and all permits, licenses and other governmental and regulatory approvals relating to the presence of Hazardous Materials within, on, under or about the Park required for the Concessionaire's use of any Hazardous Materials in or about the Park in conformity with all applicable Hazardous Materials Laws and prudent industry practices regarding management of such Hazardous Materials. The Trust recognizes and agrees that the Concessionaire may use materials in normal quantities that are applicable to the Concession for the purposes stated herein and that such use by the Concessionaire shall not be deemed a violation of this Article, so long as the levels are not in violation of any Hazardous Materials Laws. The Trust acknowledges that it is not the intent of Article X to prohibit the Concessionaire from operating in the Park for the use described in this Agreement. The Concessionaire may operate according to the custom of the industry so long as the use or presence of Hazardous Materials is strictly and properly monitored according to all applicable governmental requirements.

The Concessionaire shall not be liable for Hazardous Conditions that existed in the Park prior to the execution of the Agreement.

8.2 DISCLOSURE, WARNING AND NOTICE OBLIGATIONS. The Concessionaire shall comply with all laws, ordinances and regulations regarding the disclosure of the presence or danger of Hazardous Materials. The Concessionaire acknowledges and agrees that all reporting and warning obligations required under the Hazardous Materials Laws are the sole responsibility of the Concessionaire, whether or not such Hazardous Materials Laws permit or require the Trust to provide such reporting or warning, and the Concessionaire shall be solely responsible for complying with Hazardous Materials Laws regarding the disclosure of, the presence or danger of Hazardous Materials. The Concessionaire shall immediately notify the Trust, in writing, of any complaints, notices, warning, reports or asserted violations of which the Concessionaire becomes aware relating to Hazardous Materials on or about the Park. The Concessionaire shall also immediately notify the Trust if the Concessionaire knows or has reason to believe a complaint, notice, warning, report or violation will be released on or about the Park.

8.3 SURVIVAL OF THE CONCESSIONAIRE'S OBLIGATION. The respective rights and obligations of the Trust and the Concessionaire under Article VIII entitled "Hazardous Materials" shall survive the expiration or earlier termination of this Agreement and shall remain in effect until the applicable statute of limitations has lapsed.

ARTICLE IX SPECIAL ASSESSMENTS OR TAXES

CONCESSIONAIRE TO PAY. During the term hereof, Concessionaire covenants and agrees to pay before delinquency all Taxes assessed as a result of or in connection with the Concession. In the event Concessionaire appeals a Tax, Concessionaire shall immediately notify Trust of its intention to appeal said Tax and shall furnish and keep in effect a surety bond of a responsible and substantial surety company acceptable to the Trust or other Security satisfactory to the Trust in an amount sufficient to pay one hundred percent of the contested Tax with all interest on it and costs and expenses, including attorneys' fees, to be incurred in connection with the appeal and amount of tax owed. As provided in Article XII, Concessionaire agrees to indemnify, defend and hold harmless the City, the Trust and the Army Corps against a Tax that is assessed against them as a result of or in connection with the Concession or Concessionaire.

ARTICLE X INSPECTION OF BOOKS AND RECORDS

10.1 BOOKS AND RECORDS. During the term of this Agreement and any extension thereto, the Concessionaire shall maintain and keep, or cause to be maintained and kept at the Concession Area, or such other location in Miami-Dade County approved in writing by the Executive Director, the complete and accurate books, records and accounting of the Gross Revenues, as defined herein, and any other supporting documentation for such determination. The Trust, or its duly authorized agents or representatives, during the hours of 9:00 AM to 5:00 PM, Monday through Friday, with five (5) days prior written notice, shall have the right to examine and inspect such books and records, which shall exclude specifically any financial data and corporate records not related to the Concession, but shall include copies of existing agreements in that regard. The Concessionaire shall keep and preserve, or cause to be kept and preserved, said records for not less than three (3) years after the payment of the Concession Fee due under the terms hereof.

All books records and accounts including sales slips, cash register tapes, bank statements or duplicate deposit slips, mail orders, telephone orders, settlement report sheet of transactions with subcontractors, Concessionaire's sales tax returns applicable to Gross Revenues and all other supporting records, shall be available for inspection

and audit by the Trust, or its duly authorized agents or representatives, during the hours of 9:00 AM to 5:00 PM, Monday through Friday, and shall be maintained in accordance with generally accepted accounting procedures. Concessionaire must provide point of sale machines or such other cash registers or accounting control equipment deemed reasonably necessary and consented to by the Trust's Executive Director, for proper control of cash and payments whether such transaction is a cash or credit transaction.

For the same period of time, Concessionaire shall also retain copies of all sales tax returns covering its management and operation of the Concession, and any other governmental tax or other returns which show Concessionaire's sales therein, and shall, upon demand, deliver photographic copies thereof to the Trust. The Concessionaire will cooperate with the Trust's internal auditors (or such other auditors designated by Trust) in order to facilitate the Trust's examination of records and accounts.

10.2 AUDITS. The Trust may inspect the books and records of the Concessionaire relating to the performance of this agreement, and shall be permitted to conduct an audit pursuant to Section 18-102 of the City of Miami Code of Ordinances. With each audit, the Concessionaire shall pay to the Trust any unpaid balance of the Trust Fee, if any, and the Trust shall refund overpayments, if any, and in either case payment shall be made within thirty (30) days notice from the Trust as to the results of the audit.

The Concessionaire shall allow the Trust or the auditors of the Trust to inspect all or any part of the compilation procedures for the aforesaid monthly reports. Said inspection shall be reasonable and is at the sole discretion of the Trust. Records shall be available Monday through Friday, inclusive, between the hours of 9:00 AM and 5:00 PM at the Concession Area, or at such other location in Miami which may be approved by the Trust's Executive Director.

The acceptance by Trust of payments of the Trust Fee shall be without prejudice to Trust's right to conduct an audit in order to verify the amount of annual Gross Revenues made by Concessionaire in connection with or as a result of the Concession.

ARTICLE XI MODIFICATIONS AND IMPROVEMENTS FOR CONCESSION OPERATIONS

11.1 MODIFICATIONS. The Concessionaire shall not make, or permit to be made, any Modifications without the prior written consent of the Executive Director. The Trust consents to the Modifications to the Concession Area as delineated in Attachment D.

If the Executive Director grants consent for Modifications to be made to the Concession Area, then:

(i) Modifications shall be performed in a good and workmanlike manner in accordance with all applicable Federal, State and local statutes, laws, ordinances and regulations, as they presently exist and as they may be amended hereafter.

(ii) All Modifications shall be made at the Concessionaire's sole cost and expense.

(iii) The Concessionaire shall pay for and obtain the necessary and applicable permits in compliance with all Federal, State and local laws, rules and regulations in connection with any Modification made by the Concessionaire to the Concession Area.

(iv) Upon the termination of the Agreement, Concessionaire shall remove the Modifications from the Concession Area. If any part of the Park is in any way damaged by the removal of such items, said damage shall be repaired by the Concessionaire at its sole cost and expense.

(v) Should the Concessionaire fail to repair any damage caused by the Concessionaire to the Park within thirty (30) days after receipt of written notice from the Executive Director directing the required repairs, the Concessionaire shall be in default and the Trust shall cause the Concession Area to be repaired at the sole cost and expense of the Concessionaire. The Concessionaire shall pay the Trust the full cost of such repairs within thirty (30) days of receipt of an invoice indicating the cost of such required repairs. Failure to pay such invoice within such time period shall result in the Trust applying the Deposit towards the past due amount. This provision shall survive the termination of this Agreement.

11.2 LIENS AND ENCUMBRANCES. The Concessionaire shall keep the Park free and clear of any liens and encumbrances in connection with the Concession. Nothing in this Agreement shall be construed as constituting the consent or request of the Trust, expressed or implied, by inference or otherwise, to any contractor, subcontractor, laborer or material men to perform of any labor or the furnishing of any materials for any specific Modification, or repair of or to the Concession Area or any other portion of the Park, nor as giving the Concessionaire the right, power or authority to contract for or permit the rendering of any services or the furnishing of any materials that would give rise to the filing of any mechanics liens or other encumbrance against the the City or the Trust's interest in the Park, respectively.

If any lien shall at any time be filed against the City, the Trust or the Army Corps as a result of any Modification undertaken by the Concessionaire, the Concessionaire shall cause it to be discharged of record within twenty (20) days after the date the Concessionaire has knowledge of its filing or institute an action challenging the lien. If the Concessionaire shall fail to discharge a lien; or, Concessionaire shall institute an action with the appropriate Court seeking the discharge within that period, then in addition to any other right or remedy, the Trust may, but shall not be obligated to, discharge the lien either by paying the amount claimed to be due or by procuring the discharge of the lien by deposit in court of bonding, or in the event the Trust shall be

entitled, if it so elects, to compel the prosecution of any action for the foreclosure of the lien by the lienor and to pay the amount of the judgment, if any, in favor of the lienor with interest, costs and allowances with the understanding that all amounts paid by the Trust shall constitute Additional Fee due and payable under this Agreement and shall be repaid to the Trust by the Concessionaire immediately upon rendition of an invoice or bill by the Trust. The Concessionaire shall not be required to pay or discharge any lien so long as the Concessionaire shall in good faith proceed to contest the lien by appropriate proceedings and if the Concessionaire shall have given notice in writing to the Trust of its intention to contest the validity of the lien and shall furnish and keep in effect a surety bond of a responsible and substantial surety company reasonably acceptable to the Trust or other security reasonably satisfactory to the Trust in an amount sufficient to pay one hundred ten (110) percent of the amount of the contested lien claim with all interest on it and costs and expenses, including reasonable attorneys' fees, to be incurred in connection with it.

ARTICLE XII INDEMNIFICATION AND INSURANCE

12.1 INDEMNIFICATION AND HOLD HARMLESS. The Concessionaire shall indemnify, defend and hold harmless the Indemnitees and each of them from and against all loss, costs, penalties, fines, damages, claims, expenses (including attorney's fees) or liabilities (collectively referred to as "Liabilities") by reason of any injury to or death of any person or damage to or destruction or loss of any property arising out of, resulting from, or in connection with (i) the performance or non-performance of the Concession services contemplated by this Agreement, which is or is alleged to be directly or indirectly caused, in whole or in part, by any act, omission, default or negligence (whether active or passive) of the Concessionaire or its employees, agents or Subcontractors (collectively referred to as "Concessionaire"), regardless of whether it is, or is alleged to be, caused in whole or part (whether joint, concurrent or contributing) by any act, omission, default or negligence (whether active or passive) of the Indemnitees, or any of them or (ii) the failure of the Concessionaire to comply with any of the paragraphs herein or the failure of the Concessionaire to conform to statutes, ordinances, or other regulations or requirements of any governmental authority, federal or state, in connection with the performance of this Agreement. The Concessionaire expressly agrees to indemnify and hold harmless the Indemnitees, or any of them, from and against all liabilities, which may be asserted by an employee or former employee of the Concessionaire, or any of its Subcontractors, as provided above, for which the Concessionaire's liability to such employee or former employee would otherwise be limited to payments under state Workers' Compensation or similar laws.

In case any action or proceeding shall be brought against Indemnitees by reason of any claim, the Concessionaire upon notice from Indemnitees shall defend the same at the Concessionaire's expense by counsel approved in writing by Indemnitees. Indemnitees reserve the right to defend themselves.

The Concessionaire shall immediately notify the Indemnitees, in writing, of any claim or action filed, of whatever nature, arising out of the use or operation of the Concession Area by the Concessionaire, its agents, contractors, employees, servants or invitees. The Concessionaire shall also immediately notify the Indemnitees if the Concessionaire knows or has reason to believe a claim or action will be filed, of whatever nature, arising out of the operation of the Concession or use of the Concession Area by the Concessionaire, its agents, contractors, employees, servants or invitees.

The Concessionaire shall also indemnify, protect, defend and hold the Trust free and harmless from and against any and all claims, liabilities, penalties, forfeitures, losses and expenses (including attorneys' fees) or death of or injury to any person or damage to any property whatsoever, arising from or caused in whole or in part, directly or indirectly, by the presence in or about the Park of any Hazardous Materials placed in or about the Park by the Concessionaire or at the Concessionaire's direction or used by the Concessionaire or by the Concessionaire's failure to comply with any Hazardous Materials Law or in connection with any removal, remediation, cleanup, restoration and materials required hereunder to return the Concession Area and any other property of whatever nature to their condition existing prior to the appearance of the Hazardous Materials.

The Concessionaire shall hold harmless and indemnify the Indemnitees for any errors in the provision of the Concession or for any fines, which may result from the Concessionaire's services.

12.2 INSURANCE. Prior to the installation of any equipment, Modifications, or personal property within the Park, the Concessionaire shall provide the Trust with a certificate of insurance acceptable to the Trust and the City Risk Administrator, and the Concessionaire shall, and at all times thereafter during the term hereof, maintain such insurance coverage as is set forth on Attachment tE, attached hereto.

The Indemnitees shall be named additional insureds on all insurance policies required herein. All such insurance, including renewals, shall be subject to the approval of the City for adequacy of protection and evidence of such coverage shall be furnished to the City on Certificates of Insurance indicating such insurance to be in force and effect and providing that it will not be canceled during the performance of the services under this contract without thirty (30) calendar days prior written notice to the City. Completed Certificates of Insurance shall be filed with the City prior to the performance of services hereunder, provided, however, that the Concessionaire shall at any time upon request file duplicate copies of the policies of such insurance with the City.

If, in the judgment of the City, prevailing conditions warrant the provision by the Concessionaire of additional liability insurance coverage or coverage, which is different in kind, the City reserves the right to require the provision by the Concessionaire of an reasonable amount or type of coverage different from the amounts or kind previously required and shall afford written notice of such change in requirements thirty (30) days

prior to the date on which the requirements shall take effect. Should the Concessionaire fail or refuse to satisfy the requirement of changed coverage within thirty (30) days following the City's written notice, this Contract shall be considered terminated on the date that the required change in policy coverage would otherwise take effect; provided, however, that this Agreement shall not be terminated if the additional insurance coverage specified is not available from the insurance industry.

ARTICLE XIII DAMAGE OR LOSS TO THE CONCESSIONAIRE'S PROPERTY

13.1 RISK OF LOSS. The Indemnitees assume no responsibility whatsoever for any person or property that enters any area that Concessionaire or its invitees use as a result of or in connection with the Concession. In consideration of the execution of this Agreement by the Trust, the Concessionaire releases the Indemnitees, of any and all liability for any loss, injury, death, theft, damage or destruction to any persons or of any goods or personal property, which may occur in or about the Concessionaire including such circumstances where it could be alleged that the Indemnitees or their contractors were negligent.

13.2 NOTICE OF DAMAGES OR INJURIES. The Concessionaire shall give the Trust immediate written notice of any fire, damage or injury occurring at the Concession Area.

13.3 VANDALISM AND THEFTS. Where vandalism or theft occurs to the Concessionaire's machines, equipment, trade fixtures or operation, it shall be the sole responsibility and liability of the Concessionaire to insure, repair or replace damaged or stolen equipment at the Concessionaire's expense within forty-eight (48) hours. Upon request of the Concessionaire, the Executive Director may grant an additional period of time for the repair and replacement of the stolen or vandalized property. All vandalism or theft shall be reported to the Executive Director immediately upon discovery.

13.4 THEFT AND LOSS LIABILITY. The Trust will not be responsible for any of the Concessionaire's internal losses or thefts, and any such losses must be borne solely by the Concessionaire out of its own funds they may not be used to diminish or be absorbed by payment due the Trust.

ARTICLE XIV ASSIGNMENT

14.1 ASSIGNMENT. The Concessionaire shall not sell, assign or otherwise transfer the Concession or any rights and privileges under this Agreement or its ownership or control of the Concession to a third party without the written consent of the Bayfront Park Management Trust, which may be withheld.

ARTICLE XV SIGNAGE

BPMT/ Big Bus Tours 2012 Concession License Agreement

15.1 PROMOTIONAL SIGN PLACEMENT. The Concessionaire shall be permitted to have a maximum of three (3) promotional signs within the Park, which includes one promotional sign in the Concession Area. Promotional signs shall only include the Concessionaire's name and information that is directly related to the Concession. The Executive Director shall approve, in his or her sole discretion, the placement of the Concessionaire's promotional signs in the Park and determine its compatibility with the appearance of the Park. The Concessionaire shall not permit any signs or advertising matter to be placed on any portion of the Concession Area.

15.2 SIGN MAINTENANCE. The Concessionaire shall, at its sole cost and expense, install, provide, maintain its sign, decoration, advertising matter or other media as may be permitted hereunder in good condition and repair at all times.

ARTICLE XVI NOTICE

All notices or other communications, which shall or may be given pursuant to this Agreement shall be in writing and shall be delivered certified mail addressed to the parties at their respective addresses indicated below or as the same may be changed in writing from time to time. Such notice shall be deemed given on the day on which personally served, or if by certified mail, on the fifth day after being posted or the date of actual receipt, whichever is earlier.

| To the Concessionaire: | To the Trust: | |
|---|--|--|
| Julia Conway Conway Tours, Inc. d/b/a Big Bus Tours/Gray Line Miami 95 NW 23 Street Miami, Florida 33127 | Timothy F. Schmand Executive Director Bayfront Park Management Trust 301 N. Biscayne Blvd. Miami, Florida 33132 | |
| With a copy to: | With a copy to: | |
| Steven K. Baird, P.A. 5981 NE 6th Avenue Miami, Florida 33137 | Julie O. Bru City Attorney City of Miami 444 SW 2 Avenue, Suite 945 Miami, Florida 33130 | |

ARTICLE XVII DEFAULT

BPMT/ Big Bus Tours 2012 Concession License Agreement

If Concessionaire fails to comply with any term or condition of this Agreement, or fails to perform any obligations hereunder, then Concessionaire shall be in default. Upon the occurrence of a default hereunder, the Concessionaire shall have thirty (30) days from its receipt of written notice to cure the default(s), except that in the event of equipment damage, where the Concessionaire is unable to obtain replacement parts from the manufacturer within the thirty (30) days, the Executive Director shall extend such time period by a reasonable period of time. Failure to cure the default(s) within such period may, in addition to all remedies available to it by law, immediately result in termination of this Agreement by the Trust. The Concessionaire understands and agrees that termination of this Agreement under this section shall not release Concessionaire from any obligation accruing prior to the effective date of termination.

ARTICLE XVIII CONTRACT DISPUTE RESOLUTION

18.1 DISPUTE RESOLUTION PROCEDURE. The Concessionaire understands and agrees that all disputes between the Concessionaire and the Trust based upon an alleged violation of the terms of this Agreement by the Trust shall be resolved in accordance with the procedure outlined below, prior to the Concessionaire being entitled to seek judicial relief in connection therewith.

Disputes less than \$5,000: The Executive Director, after obtaining the approval of the City Attorney, shall have the authority to resolve controversies between the Concessionaire and the Trust, which arise under, or by virtue of this Agreement;

Disputes between \$5,000 - \$25,000: The Executive Director's decision shall be approved or disapproved by the City Attorney and the Trust.

Disputes more than \$25,000: In cases involving an amount greater than \$25,000.00, the City Commission must approve the Trust's decision.

Such authority extends, without limitation, to controversies based upon breach of contract, mistake, misrepresentation or lack of complete performance, and shall be invoked by a contractual party by submission of a protest to the Executive Director.

18.2 CONTRACT DISPUTE DECISIONS. If a dispute is not resolved by mutual consent, the Executive Director shall promptly render a written report stating the reasons for the action taken by Executive Director, the Trust or the City Commission, as applicable, which shall be final and conclusive. A copy of the decision shall be immediately provided to the protesting party, along with a notice of such party's right to seek judicial relief, provided that the protesting party shall not be entitled to such judicial relief without first having followed the procedure set forth in this section.

ARTICLE XIX
TERMINATION OF CONCESSION AGREEMENT

19.1 TERMINATION BY THE TRUST FOR CAUSE. In the event the Concessionaire fails to cure a default as set forth at Article XVII the Trust shall have the right to terminate this Agreement. Upon termination, the Concessionaire's rights to manage and operate the Concession will end forthwith.

19.2 TERMINATION BY EITHER PARTY WITHOUT CAUSE. Either party may terminate this Agreement at its sole option, for any reason whatsoever, upon at least thirty (30) days written notice to the other Party. Upon such termination, the Concessionaire agrees to waive any claims for damages, including loss of anticipated fees and profits, arising out of the termination of this Agreement.

The Concessionaire or its personal property shall not continue to be in the Park thirty (30) days after the Termination Date. If the Concessionaire or its personal property remains within the Park after thirty (30) days following the Termination Date, the Trust shall utilize any and all remedies at law or at equity to effectuate removal of the Concessionaire or its personal property.

19.3 TERMINATION BY THE CONCESSIONAIRE WITH CAUSE. In the event the Trust defaults or fails to observe the terms and conditions of this Agreement in any material aspect, the Concessionaire shall have the right to terminate the Agreement after notifying the Trust in writing of the action required to correct the problem and giving the Trust thirty (30) days from receipt of said notice to correct the problem.

19.4 RESTORATION OF THE PARK. At the expiration of the Term, or earlier termination of this Agreement, the Concessionaire shall no longer provide Concession services to the Park and shall deliver to the Trust all keys that it has to any part of the Concession Area or the Concession Area. The Concessionaire shall return all facilities, equipment and other items furnished by the Trust, including any portion of the Park that may have been used by the Concessionaire, in the condition in which received, reasonable wear and tear excepted. It is agreed that, upon the expiration of the Term or earlier termination of this Agreement, Concessionaire shall be responsible for restoring the portions of the Park to their original condition, as may be shown in Attachment F.

The Concessionaire will be responsible for all losses and damages to the Park resulting from its default, failure or negligence during the Term of this Agreement. If within thirty (30) days of termination of this Agreement the Trust determines that any part of the Park is damaged as a result of the Concession, and that such condition was not readily evident at the time of the Concessionaire surrendered possession of the Concession Area, the Trust reserves the right to have the Concessionaire pay for the repairs to said portions of the Park. This clause shall survive the expiration of this Agreement.

19.5 HAZARDOUS WASTE. Upon termination or expiration of this Agreement, the Concessionaire shall, at its sole cost and expense, cause all Hazardous Materials, including their storage devices placed in or about the Concession Area by the Concessionaire or at the Concessionaire's direction to be removed from the Concession Area and transported for use, storage or disposal in accordance and compliance with all applicable Hazardous Materials Laws.

ARTICLE XX ABANDONMENT

20.1 ABANDONMENT If the Concessionaire shall vacate or abandon the Concession Area during the Term or Additional Term of this Agreement for a period of ten (10) consecutive days or thirty (30) days during a Concession Agreement Year, except as provided in this Agreement, the Trust, at its option and without serving notice elsewhere required in this Agreement, may either:

(i) Take immediate possession of the Concession Area for the remainder of the Term or Additional Term, and contract with another person or corporation for the provision of Concession at the Concession Area. In such event the Concessionaire shall remain liable for all obligations under this Agreement; or

(ii) Cancel this Agreement; or

(iii) Remove and store Concessionaire's Modifications and personal property at Concessionaire's expense. Such items shall otherwise be disposed of according to Florida law, as abandoned property.

ARTICLE XXII UNAVOIDABLE DELAY AND IMPOSSIBILITY

22.1 UNAVOIDABLE DELAY. For the purpose of any of the provisions of this Agreement, neither the Trust nor the Concessionaire shall be considered in breach of or in default of any obligations under this Agreement in the event of an Unavoidable Delay, which results in impossibility of performance, in accordance with the provisions of Article below entitled "Performance of Obligations."

22.2 PERFORMANCE OF OBLIGATIONS. In the event of an Unavoidable Delay resulting in impossibility of performance, the time for performance of obligations, covenants, and/or agreements, which are affected by the Unavoidable Delay shall be extended for the period of time of the Unavoidable Delay or for such period of time as may be necessary under the circumstances, provided that the party seeking the benefit of the provisions of this Article shall:

- (a) As soon as reasonably possible, but no later than thirty (30) days after such party shall have become aware of the Unavoidable Delay, give notice, in writing to the other party hereto of the Unavoidable Delay, which notice shall specify, which of the obligations, covenants, and/or agreements of this Agreement the notifying party is unable to perform at the time of such notice and how the Unavoidable Delay has affected the party's performance of such obligations, covenants, and/or agreements; and
- (b) As soon as reasonably possible, the party claiming such an Unavoidable Delay shall commence and shall continue diligently the performance of such obligations, covenants, and/or agreements so delayed.

ARTICLE XXIII MISCELLANEOUS

23.1 COMPLIANCE WITH LAWS. The Concessionaire shall comply with all applicable federal, state and local laws, regulations, orders, ordinances and codes pertaining to its performance under this Agreement.

23.2 INDEPENDENT CONTRACTOR. The Concessionaire and its employees and agents shall be deemed to be independent contractors, and not agents, employees or representatives of the Army Corps, the City or the Trust and shall not attain rights or benefits under the Civil Service or Pension Ordinances of the City nor any rights generally afforded classified or unclassified employees; further they shall not be entitled to the Florida Workers Compensation benefits as employees of the City or the Trust.

23.3 SUCCESSORS AND ASSIGNS. This Agreement shall be binding upon the parties herein, their heirs, executors, legal representatives, successors and assigns.

23.4 AMENDMENTS. The Trust and the Concessionaire by mutual agreement shall have the right but not the obligation to amend this Agreement. Such amendments must be in writing and shall be effective only when approved by the Trust and signed by the Executive Director and the Concessionaire and shall be incorporated as a part of this Agreement.

23.5 AWARD OF CONCESSION AGREEMENT. The Concessionaire warrants that it has not employed or retained any person employed by the Trust to solicit or secure this Agreement and that it has not offered to pay, paid, or agreed to pay any person employed by the Trust any fee, commission, percentage, brokerage fee, or gift of any kind contingent upon or resulting from the award of this Agreement.

23.6 CONFLICT OF INTEREST. The Concessionaire is aware of the conflict of interest laws of the City of Miami (Miami City Code Chapter 2, Article V), Dade County, Florida (Dade County Code, Article 2-11.1 et. seq.) and of the State of Florida as set

forth in the Florida Statutes, and agrees that it will fully comply in all respects with the terms of said laws and any future amendments thereto.

23.7 GOVERNING LAW. This Agreement shall be construed and enforced according to the laws of the State of Florida.

23.8 COURT COSTS AND ATTORNEYS' FEES. In the event that it becomes necessary for the Trust to institute legal proceedings to enforce the provisions of this Agreement, each party shall pay its own court costs unless otherwise provided by federal or state law.

23.9 SEVERABILITY. If any provision of the Agreement, or any paragraph, sentence, clause, phrase, or word, or the application thereof, is held invalid, the remainder of the Agreement shall be construed as if such invalid part were never included herein and the Agreement shall be and remain valid and enforceable to the fullest extent permitted by law.

23.10 WAIVER. No waiver of any provision hereof shall be deemed to have been made unless such waiver is in writing and signed by the Trust or the Concessionaire. The failure of either party to insist upon the strict performance of any of the provisions or conditions of this Agreement shall not be construed as waiving or relinquishing in the future any such covenants or conditions but the same shall continue and remain in full force and effect.

23.11 CAPTION. The captions contained in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or prescribe the scope of this Agreement or the intent of any provisions thereof.

23.12 PUBLIC RECORDS. To the extent applicable to the Concessionaire, it shall comply with the Public Records Law, Florida Statutes, Chapter 119. The Concessionaire shall not be deemed to acknowledge the applicability of the Public Records Law to its operation by entering into this Agreement.

23.13 VENUE. Venue for any legal proceedings shall be Miami-Dade County.

23.14 REAFFIRMATION. The Concessionaire hereby reaffirms all of the representations contained in the Solicitation Documents which is incorporated by reference and made a part of this Agreement.

23.15 TIME. If a provision in the Agreement does not clarify whether it is calculated in calendar or business days, then the days shall be calculated in calendar days. If the time that any act, duty or obligation becomes due falls on a Saturday, Sunday or holiday, then unless otherwise provided in this Agreement, such act, duty or obligation shall become due the next business day.

23.16 EXCLUSIVITY. The Trust represents, warrants and covenants to the Concessionaire that no other hop-on, hop-off bus tour operator will be contracted on or from the real property known as Bayfront Park during the Term of this agreement.

ARTICLE XXIV AMENDMENTS TO PLANS

Pursuant to this Agreement, the Concessionaire shall submit an Operations Plan which shall be attached to and incorporated with this Agreement which has obtained Trust and Commission approval as Attachment C. The Trust shall approve, without additional Commission approval, any subsequent amendments to these aforementioned plans that solely pertain to the Concession Area.

ARTICLE XXV ENTIRE AGREEMENT

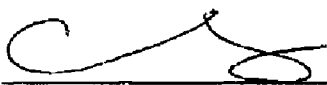
This Agreement represents the total agreement between the parties. All other prior agreements between the parties, either verbal or written, are superseded by this Agreement and therefore no longer valid.

(Signature page follows)


IN WITNESS WHEREOF, the Parties hereto have caused this instrument to be executed, through their proper officials, the day and year first above written.

Attest:

THE CONCESSIONAIRE

By: 
Print Name Christina Hooney
Print Title HR manager


Date: 5/14/12

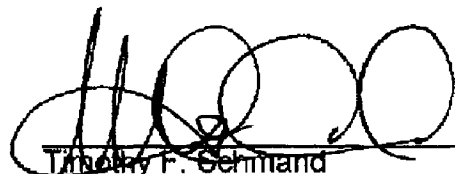
By: 
Print Name Juliana M. Conda
Print Title CO/CA

Date: 5/14/2012


Attest:

Bayfront Park Management Trust,
a limited agency and instrumentality
of the City of Miami

 6-04-2012
Jesse Gell
Administrative Officer
Date:


Timothy F. Gehrmann
Executive Director
Date:

APPROVED AS TO FORM
AND CORRECTNESS


Julie O. Bru
City Attorney

Date:

APPROVED AS TO INSURANCE
REQUIREMENTS


Calvin Ellis
Risk Management Administrator

Date:

BPMT/ Big Bus Tours 2012 Concession License Agreement

*Letter from
Director*

MILDRED AND CLAUDE PEPPER

BAYFRONT PARK

MANAGEMENT TRUST

301 N. BISCAYNE BOULEVARD, MIAMI, FL 33132

TELEPHONE: (305) 358-7550 FAX: (305) 358-1211

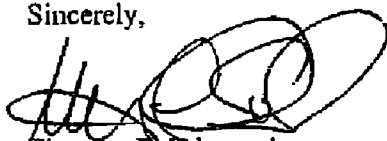
June 10, 2013

Ms. Julia Conway
General Manager
Big Bus Tours Miami
PO Box 380822, Miami, FL 33138

Dear Ms. Conway,

I write this letter to affirm that Conway Tours, Inc. d/b/a Big Bus Tours/Gray Line Miami has been, and continues to be, a concessionaire of the first rank in Bayfront Park. You have positioned the park as the Big Bus Central Station and festooned what had been a rather drab service area with signage and banners enhancing the park's image while providing a much needed service to the region's tourism industry. I am particularly excited by your recent proposal to add a water borne element to your operation. As a long time proponent of a water taxi connecting Miami Beach and Miami, I recognize the Big Bus efforts as a great leap toward that end. Should you have any questions regarding my support for these efforts, I am available to discuss further.

Sincerely,



Timothy F. Schmand
Executive Director

Cc: file



Big Bus Tours Miami * PO Box 380822, Miami, Florida 33138 * 800.336.8233 phone * 305.759.7636 fax www.bigbustours.com * a member of Gray Line Worldwide

**SUMMARY OF BIG BUS TOURS' PROPOSAL TO
BAYFRONT PARK MANAGEMENT TRUST AND THE
CITY OF MIAMI
MAY 14, 2013**

CONCEPT –

As we constantly strive to enhance our guests' experience, develop our operation, and grow our business, we have identified the fact that connecting our City and Beach Loops by an alternative means of transport is integral to ongoing success and retention of market share. As we have an excellent 20-year working relationship with Island Queen Cruises, the most established and reputable boat-excursion company in Miami, it is a natural fit for our two companies to join forces in the creation of the Big Bus Water Taxi. At the outset, the water taxi will primarily serve Big Bus passengers with development plans to serve both the touristic and residential public. Please see Attachment A Page 1 for a view of Island Queen's vessels. Of particular note is the Beach Lady as she is the first in the fleet of water taxis. Also, please see Attachment A Page 2 for the water taxi route, permanent, established, and pending stops.

SCOPE AS IT RELATES TO BAYFRONT PARK –

We propose to establish a permanent location at/on the first north dock at Bayfront Park to be the main boarding location for this service. We would like to create a robustly branded kiosk area that would replace the current trailer with an attractive and modern look and feel. Please see Attachment B Pages 1 through 3 for current images. This retail location would sell water taxi tickets, Big Bus Tour tickets, attraction tickets, day tour and excursion tickets, limited food and beverage, and selected merchandise relevant to Miami. The food and beverage concession will be limited to very portable snack-type items and not be considered impediment to any future development of a food and/or restaurant concession agreement in the Park. The area would include queue stanchions and passenger waiting areas. We would like the ability to create a photography area on the dock as well. We would need to enhance the lighting and add surveillance cameras to the vicinity. Island Queen Cruises also requests to have the ability to sublease the first north dock after water taxi operational hours and the second north dock and south dock per shared calendar with the Park for charters, pickups and overnight stays to its vast network of boat owners and brokers.

CITY OF MIAMI BEACH COMPONENT

Big Bus is well established on the City side of the route and we have one secure location on the Beach side. We are working on establishing permanent locations in the City of Miami Beach. Additionally, the City of Miami Beach's Marine Authority Board has adopted a resolution proposing "Public Bayside Vessel Landing Pier in the City of Miami Beach," attached as Attachment C. This positive development clearly demonstrates interest from the Beach for this concept, and we are actively pursuing this plan with Miami Beach.

DAYS, TIMES & SCHEDULE –

Big Bus Tours Water Taxi will operate 7 days a week from 9:00am to 7:00pm. And, as high season demands, we would like to have open availability to extend these hours. At the start, water taxi service will be hourly with the goal to increase to 30-minute, then 15-minute frequency with the acquisition of vessels. Also, we would like to have the availability for Island Queen's Millionaire's Row Tours to depart from the dock when water taxis are not present. As we currently do, we will amend service on special event days at the park as communicated in advance by the Park's management.

RATES & SERVICES –

At the outset, the water taxi will be a value added component to the Big Bus Tours ticket. Our retail ticket price for a one-day pass will increase from \$39 per adult to \$45 per adult. We are still in the analysis stage of the water taxi rates as a stand-alone product, but will advise once determined. We are aware of the amendment of section 53.1 of the City of Miami Code as it relates and applies to sightseeing boat tours and will take this into considerations as we set our rates and delineate our tariff and fees listings on our tickets.

JANITORIAL & CLEANING CONSIDERATIONS –

We will have on staff a dedicated custodian for all operational days, providing for a minimum of two walkthroughs per day for trash. Our expectation is to use the Park's dumpster facility to deposit the collected trash. We will add trash cans as deemed necessary and in locations by mutual decision with Park maintenance staff. We will enhance our current steam cleaning to include new operational areas and the docks. We will remove any retrievable floating debris as well.

HURRICANE PLAN –

In the event of an impending hurricane, our staff will convene 4-days prior to the forecasted event to review the preparedness plan and assign tasks. The plan will be executed 48-hours prior to storm arrival. We will remove, transport and store in the Big Bus garage, all loose items, e.g. flags, furniture, umbrellas, garbage cans, signage, podiums, sign boards, etc. No boats will remain on the dock during the storm. Depending on the forecasted intensity of the storm, more permanent kiosk fixtures will also be removed.

TICKETS, REPORTING AND ACCOUNTING –

Water Taxi passengers will be ticketed with the Big Bus POS system. This holds true for all ancillary sales of attractions, day tours and excursions. Retail sales of food, beverage and merchandise would be controlled with an inventory management system. Brokerage of the docks would be reported via calendar and ledger. All accounting and remittance remains the responsibility of Big Bus Tours' finance department and will be conducted monthly.

COLLATERAL MATERIAL –

All passengers will receive a Big Bus Tours Map & User Guide, which will be enhanced to incorporate the water taxi's route, stops and schedule.

OUR EXPERIENCE –

About Big Bus Tours Ltd. and Big Bus Tours Miami - Big Bus Tours Ltd. is the largest operator of open-top sightseeing tours in the World, providing sightseeing tours in fourteen cities across three continents. Big Bus Tours' sightseeing formula has been designed to provide a flexible approach to city discovery. Each open-top bus tour provides a hop-on, hop-off facility at a variety of interesting locations and, wherever possible, Big Bus Tours looks to enhance the visitor sightseeing experience by providing complementary experiences. We are committed to providing the perfect introduction to great cities through excellence in service and innovation. In June 2011, Big Bus Tours Ltd. wholly acquired Conway Tours, Inc. to be its Miami-based operation. Operating in South Florida for over 20 years, Conway Tours, Inc. is operated with professionalism, dependability and the superior standards for which Big Bus Tours Ltd. is recognized. Our capability to produce exceptional results comes from the use of dynamic operational procedures, successful negotiations, vast networks of technological resources and a team of people with the spirit of service and creativity.

About Island Queen Cruises – Island Queen Cruises is a celebrated family business in the City of Miami for over 65 years. We began operating out of the historic Pier 5 long before the major entertainment complex, Bayside Marketplace, was first built. After Bayside opened in 1987, the area went from a quaint fishing pier to a major tourist destination attracting an average of 15 million people a year. We were positioned to grow and expand with Downtown Miami and now our sightseeing tours run hourly, 365 days a year. Island Queen Cruises employs over 150 full-time employees and more than 75 part-time personnel who are all highly trained licensed professionals.

CONSIDERATION -

Our current monthly base is \$4,000.00 plus 7% tax and 5% revenue share for Big Bus Tour ticket sales generated in the Park. We propose an increase to \$7,500.00 plus 7% tax plus 5% revenue share on ALL transactions – Big Bus Tours tickets, Water Taxi tickets, island Queen Cruises from the first north dock, food, beverage and merchandise. Additionally, we propose that for any brokerage Island Queen is able to produce from the shared calendar, a revenue share of 20% of the dockage rate.

We will be happy to receive your feedback and comments to this proposal and applicable Attachments. Please do not hesitate to contact our office toll-free at 800-336-8233, or my mobile number, 954-444-2028.

Sincerely,

Julia M. Conway
General Manager
Conway Tours, Inc. dba Big Bus Tours Miami

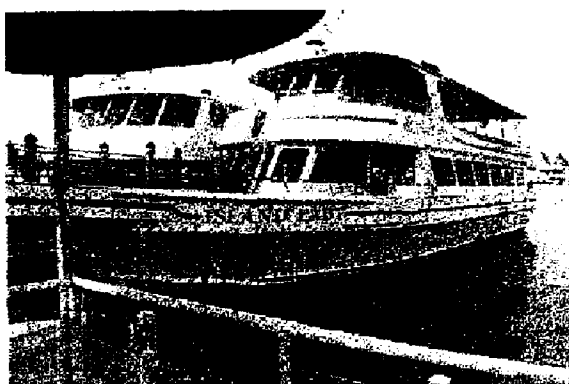
Vessels



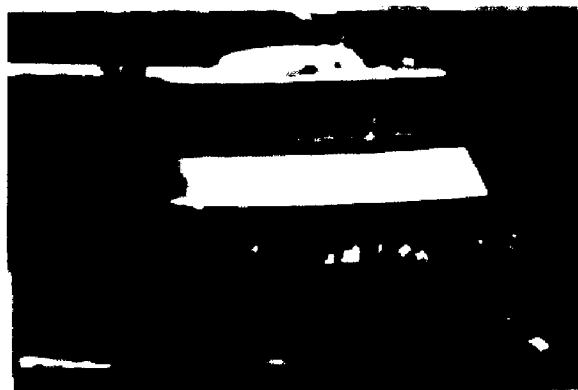
Beach Lady (Water Taxi)



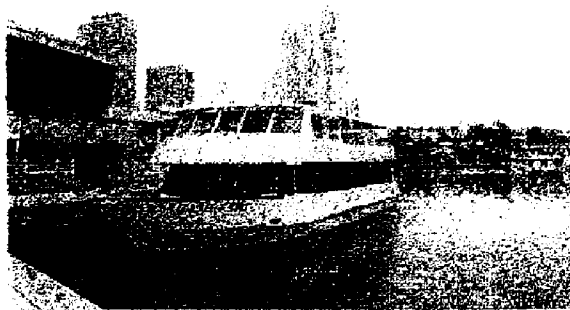
Biscayne Lady



Island Lady



Island Queen



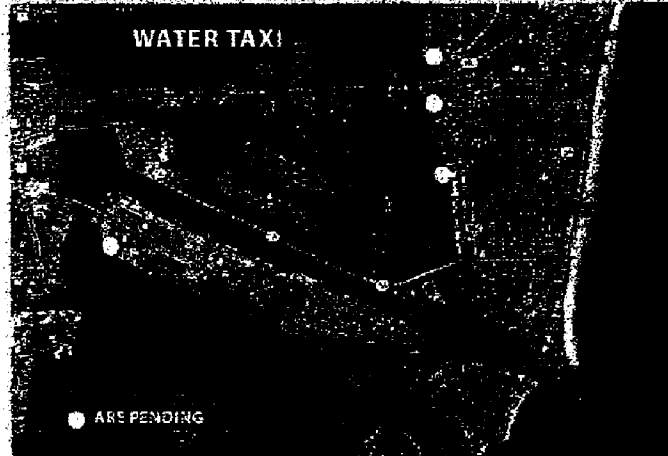
Miami Lady



Venetian Lady

Tour Outlines

Water Taxi Stops:



Millionaire's Row 1.5 hours



Miami River 2.5 hours



North Bay 2.5 hours



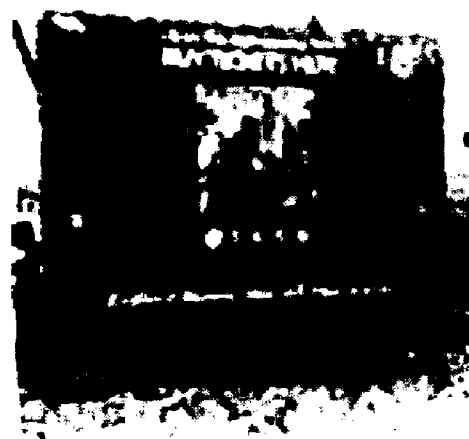
Stiltsville 4 hours

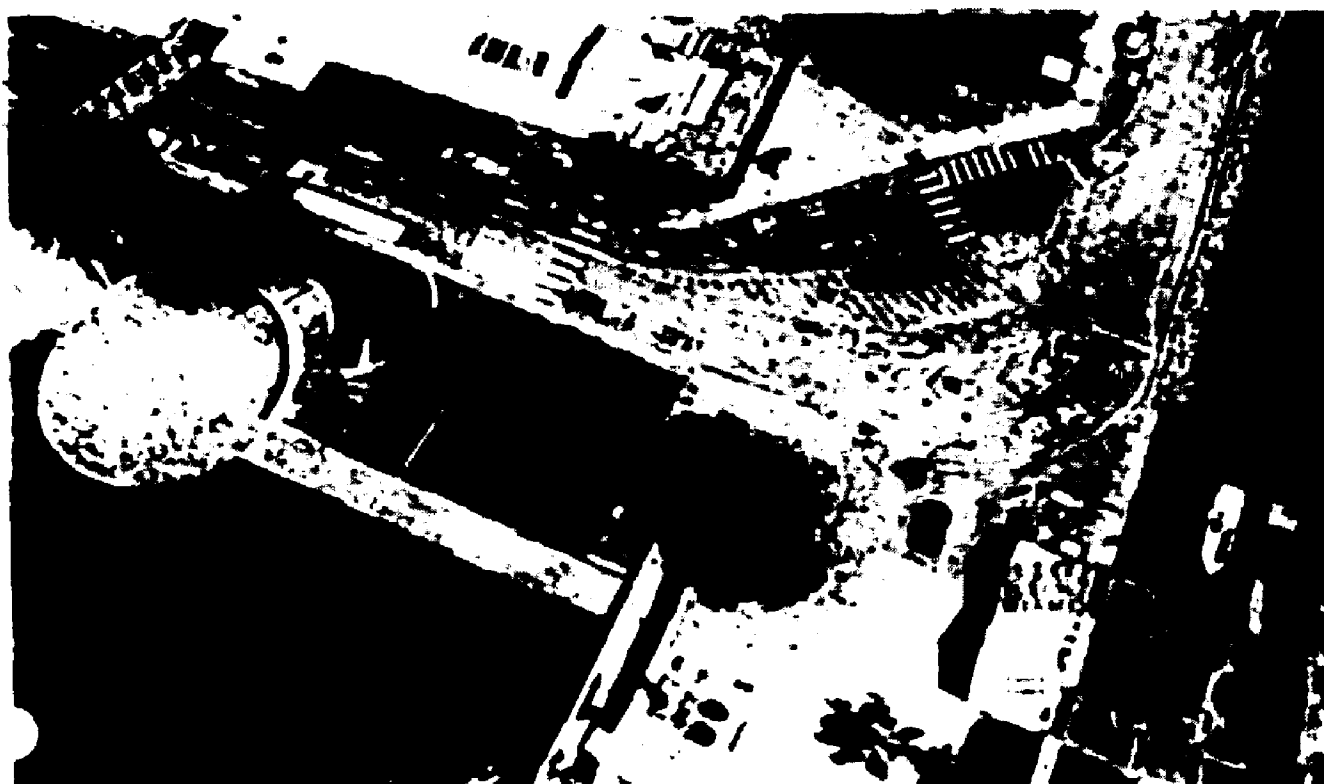


Big Bus Tours Central Station at Bayfront Park

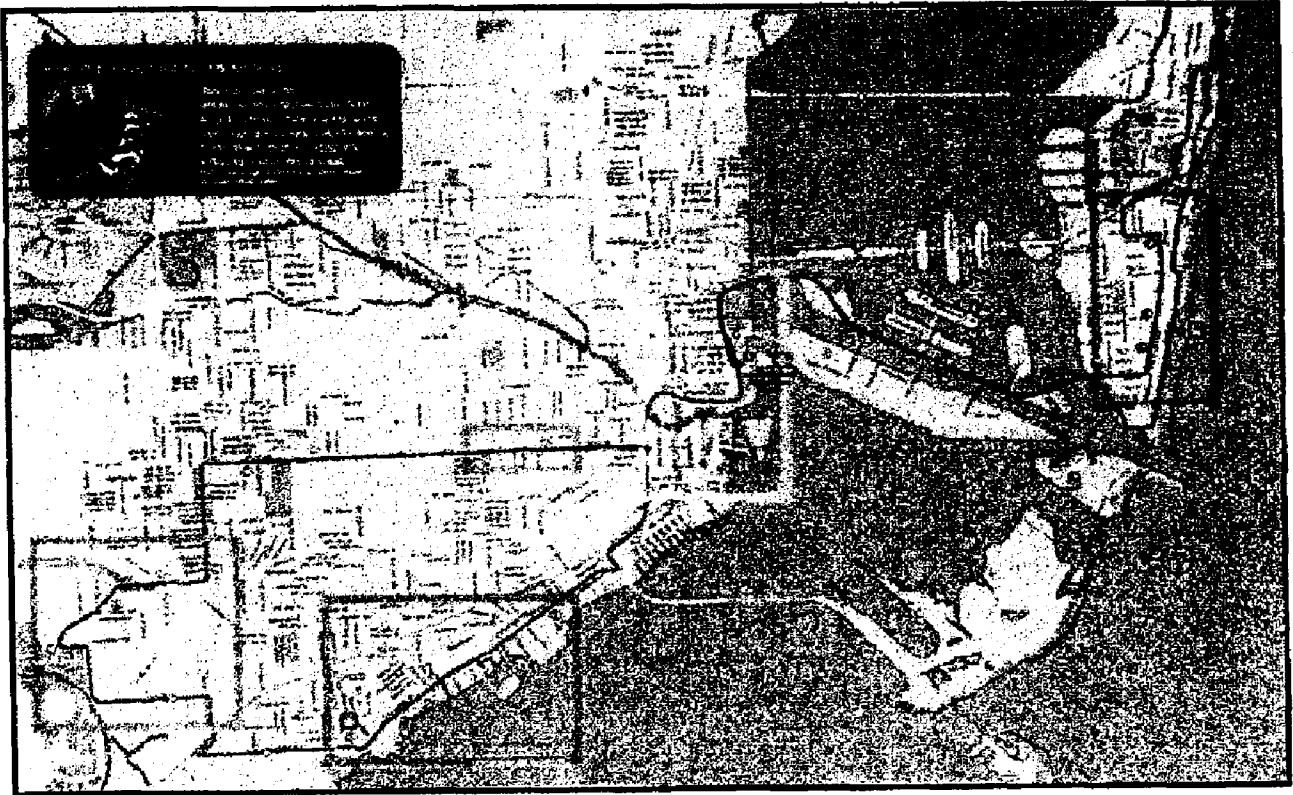


Big Bus Tours
Central Station at Bayfront Park





Big Bus Tours Routes



- **Red Line: City Loop**
- **Buses Operate a 30-Minute Schedule**
- **Blue Line: Beach Loop**
- **Buses Operate a 15-20 Minute Schedule**

**Marine Authority Board Resolution Proposing Public Bayside Vessel Landing
Piers in the City of Miami Beach**

WHEREAS the City of Miami Beach is surrounded by water with plentiful navigable waterways for use by both recreational and commercial vessels, AND

WHEREAS boating and yachting has a rich and documented history within the City of Miami Beach, AND

WHEREAS the growth of areas such as downtown Miami, Wynwood, and the Miami Design District will increase demand for transportation options between the City of Miami Beach and the mainland, AND

WHEREAS recent events such as Art | Basel | Miami Beach in December 2012 have highlighted the difficulty with existing automobile and public transportation between the City of Miami Beach and the Miami mainland during large and/or multiple events, AND

WHEREAS various experts have stated the public transportation system of Miami-Dade County needs improvement based on the needs of the community, AND

WHEREAS the City of Miami Beach would benefit from additional transportation options for both visitors and residents between the city and the Miami mainland, AND

WHEREAS allowing visitors to arrive by boat to the city would be a glamorous way to showcase the Miami Beach lifestyle and luxury real estate market, AND

WHEREAS City of Miami Beach merchants and businesses would benefit from increased visitors arriving from Miami by water for both business and pleasure purposes, AND

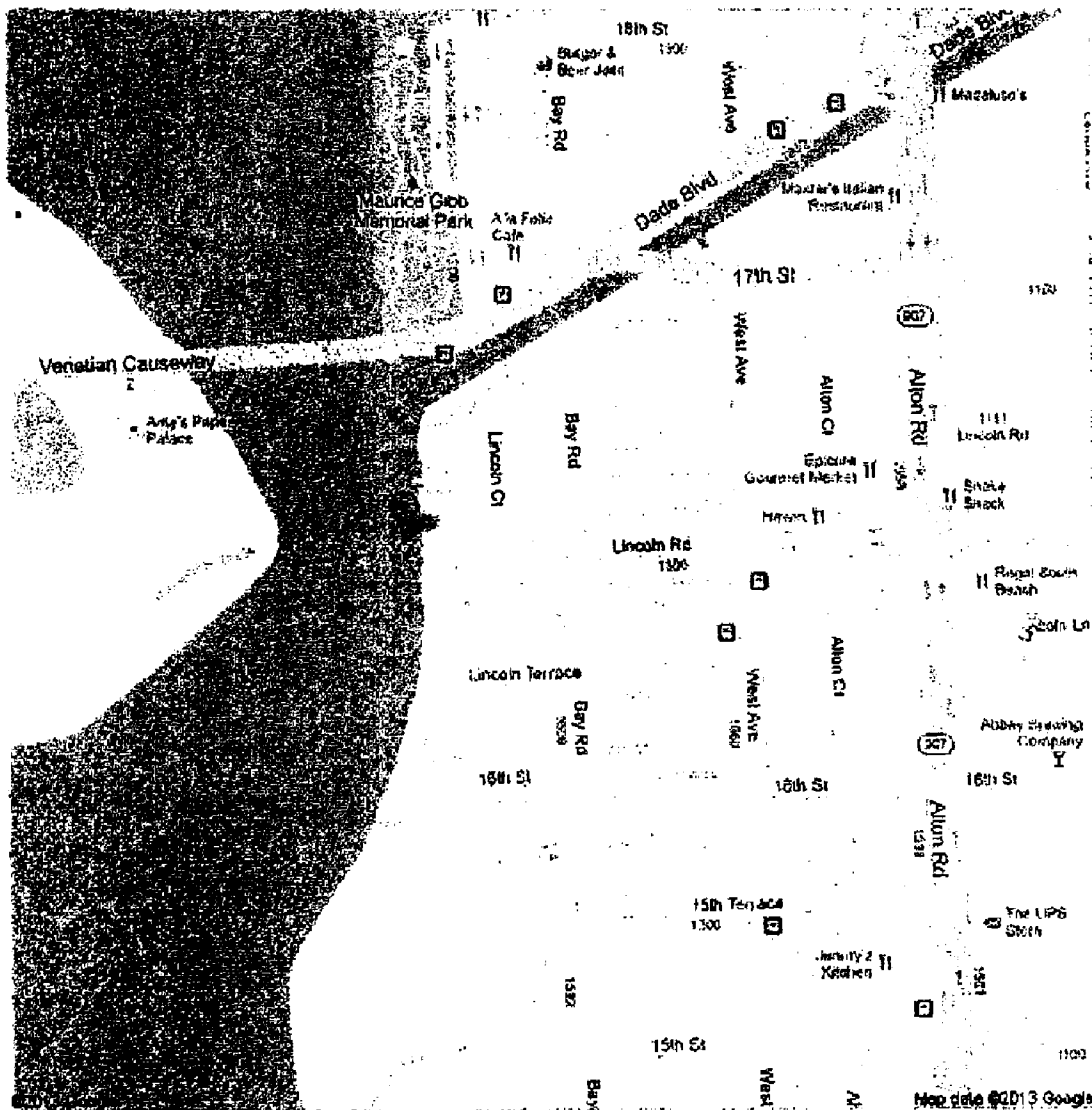
WHEREAS residents of the City of Miami Beach deserve to have a world-class, maritime transportation system at their disposal for transit uses.

BE IT RESOLVED that the City of Miami Beach Marine Authority Board recommends that the city administration devise a plan to improve public water-bourn transportation within the city, and between the city and the Miami mainland to include the following provisions:

1. The deployment of a landing pier with suitable infrastructure to accommodate passenger landing and debarkations at the end of Lincoln Road at Malloy Channel (see appendix A) from both commercial and private vessels. This pier shall be established as a pilot site for evaluation.

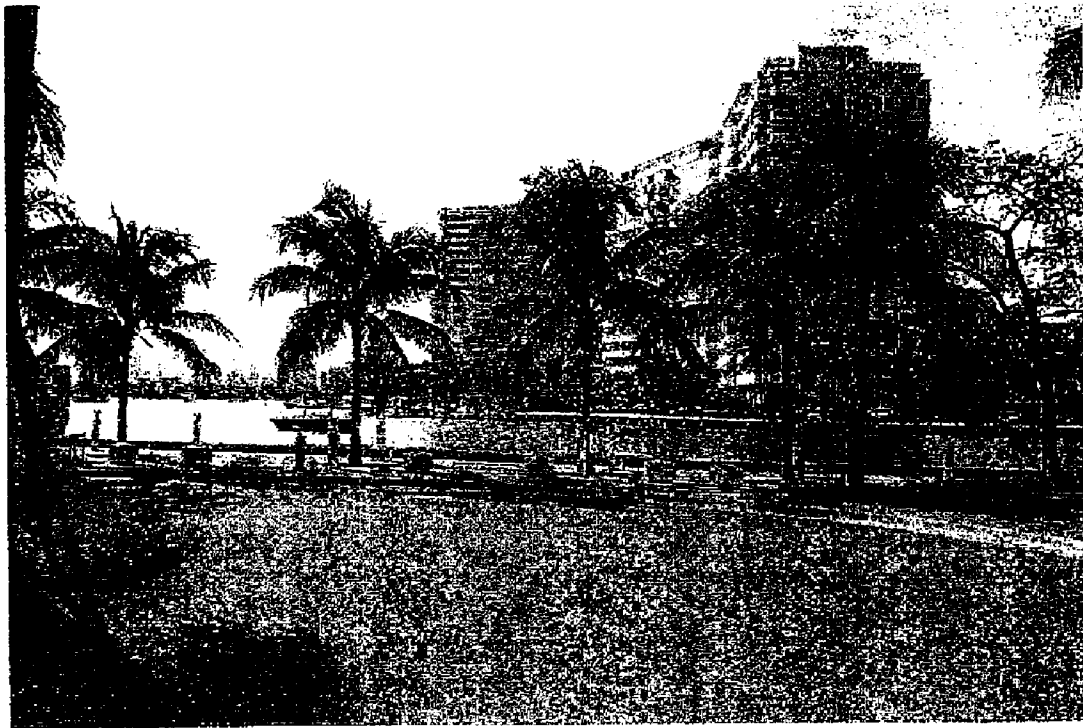
2. Upon favorable implementation and operation of the pilot site as reviewed by the Marine Authority Board, Miami Beach Police Marine Patrol, Miami Beach Park and Recreation Department, and other identified stakeholders, additional sites for landing piers shall be considered for implementation at the following sites:
 - a. South Pointe Park (old pilot station in-cut) at Government Cut
 - b. 5th Street at Malloy Channel
 - c. 10th Street at Malloy Channel
 - d. 14th Street at Malloy Channel
 - e. Purdy boat ramp area near Miami Beach Marine Patrol Station
3. These sites shall be used for the landing and pick-up of passengers from both commercial and private vessels meeting designated state and federal vessel requirements.
4. At no time shall vessel be docked to a landing pier for more than 10 minutes or other reasonable time so as to affect the landing and embarkation of passengers.
5. A contract shall be granted to one or more maritime commercial towing/salvage providers to immediately remove (tow) unauthorized vessels docked at any city landing pier. This shall operation should be consistent with the towing of automobiles from unauthorized parking spaces on land.
6. Landing piers and sites shall meet standards set forth by the American's With Disabilities Act (ADA) of 1990 as much as practicable.
7. Landing piers and sites shall be able to accommodate a minimum of two (2) vessels simultaneously ranging in length from 16 to 45 feet. Piers shall also accommodate the landing/embarkation of passengers from small private yacht dinghies.
8. This project should be as environmentally friendly as practicable with guidance from ECOMB and DERM as key stakeholders.
9. A severe weather plan should be created to protect and preserve the pier to the extent possible against inclement weather including tropical storms, hurricanes, and severe tidal surges.
10. If feasible as determined by appropriate city administration including the Department of Parks and Recreation, launching points shall be established at these sites for non-motorized paddle craft such as canoes, kayaks, and paddle boards, in a manner so as not to impede the safe, effective landing and disembarkation of passengers from vessels at each landing site.

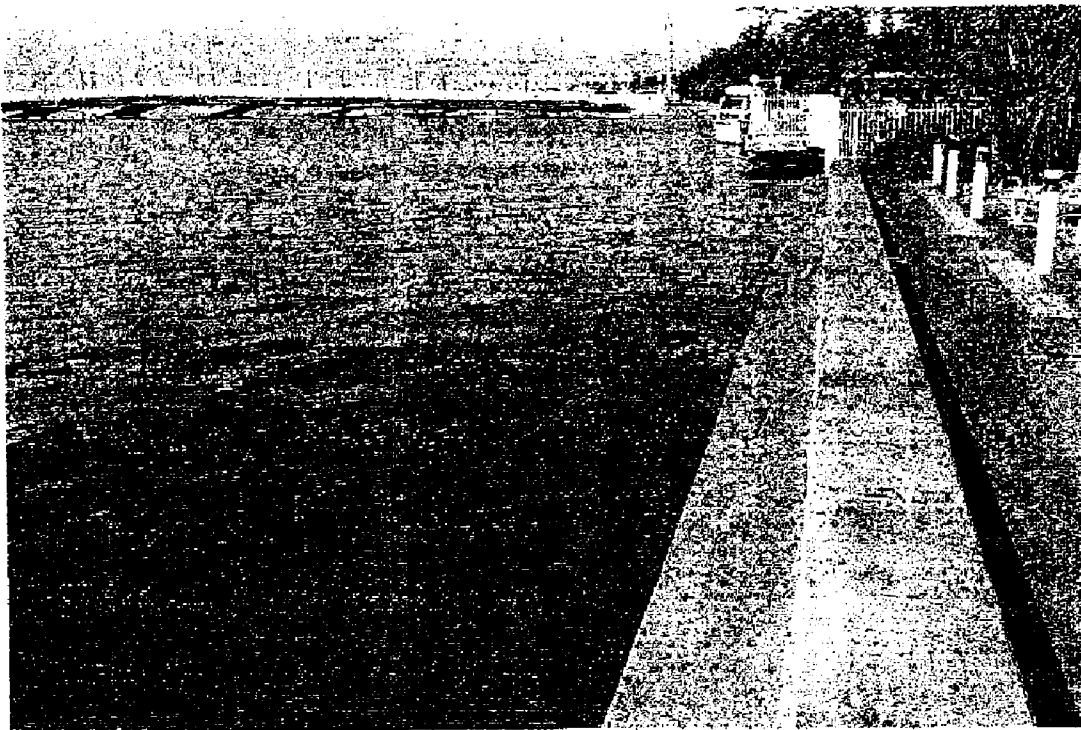
APPENDIX A – Lincoln Road at Malloy Channel Proposed Landing Pier Site

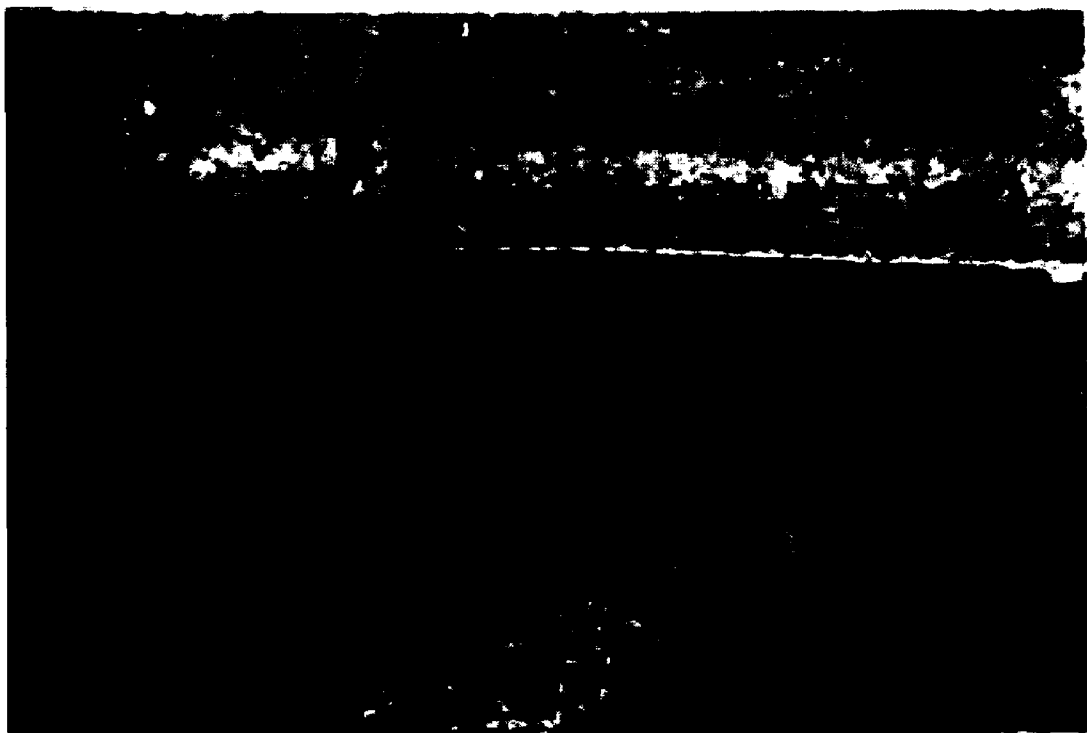


Proposed Lincoln Road Boat Pier

APPENDIX A (CONT) - Lincoln Road at Malloy Channel Proposed Landing Pier
Site - PHOTOS









FORT LAUDERDALE

EXPLORE South Florida from The Water Taxi. Your Water Taxi ticket lets you on and off its stops all day while taking in the sights along Fort Lauderdale's world famous waterways, which have earned the city the nickname, "The Venice of America".

The Water Taxi is like a trolley-on-the-water. Board a Water Taxi at any of our stops and purchase your ticket onboard, cash or credit card. Then choose which stops you'd like to explore, and hop off to check out Fort Lauderdale's attractions, shopping and dining. Hop back on and head to your next stop, or just sit back and enjoy the ride.

There are multiple routes to choose from that give you access to both Hollywood and Fort Lauderdale's beaches, world-class shopping and dining, and the many cultural and historical options in both cities — all for one low price! Not all Water Taxis make every stop — but on every Water Taxi you will have unparalleled views of Fort Lauderdale and Hollywood!

Not sure where to go?

The Water Taxi main route travels in two directions, Inbound and Outbound. Inbound takes you "in" to the New River, downtown Fort Lauderdale and the Las Olas area. Outbound takes you "out" of the New River, and heads north, towards the Galleria Mall and Shooters Restaurant. There is also the Hollywood Route, which heads south to Hollywood Beach.

Our crew will happily help you plan your day as you cruise past many interesting sites from million-dollar mansions to mega yachts. They will also highlight our Cruise & Save program, with over 50 of the hottest restaurants, bars and attractions located steps from our stops that offer Water Taxi Guest a sensational discount. The Fort Lauderdale Water Taxi runs year-round, with the following changes in schedule: Thanksgiving, the annual Winterfest Boat Parade, and New Year's Eve we close early; Christmas day we are closed, and during the Fort Lauderdale International Boat Show we have limited service to only a few stops and the main boat show venues.

If you are interested in a night trip, try our Moonlight Madness deal! Tickets purchased on-board after 5 PM are all priced at the children's rate — \$13.00. Perfect for anyone looking to enjoy a night out on the town and on the water!

Service Area:

The Water Taxi routes run between Oakland Park Boulevard and Southeast 17th Street along the Intracoastal waterway, and west along the New River into downtown Fort Lauderdale as far as the Las Olas Riverfront complex. The Hollywood route departs Fort Lauderdale from Stop 5.

Stop 1 Las Olas Riverfront/Briny Irish Pub
4 West Las Olas Boulevard

P **WATER TAXI PARKING GARAGE at Stop 11 40 West Las Olas Boulevard**
\$5.00 parking at the Riverfront Garage when you buy your Water Taxi tickets there!

Stop 1a Pirate Republic Bar
400 SW Third Ave
* NOTE: If the railroad bridge is down at the scheduled departure time, Water Taxi cannot access the Pirate Republic.

Stop 2 Downtowner Saloon
10 South New River Drive East

Stop 3 Shops and Restaurants at Las Olas
904 East Las Olas Boulevard, end of 9th Ave

Stop 4 15th Street Fisheries
1900 SE 15th Street

Stop 5 (Hollywood Connection-year round)
Hilton Marina/Convention Center
1881 Southeast 17th Street (under W side of 17th St bridge)

Stop 6 Hyatt Regency Pier 66
2301 SE 17th Street

Stop 7 Bahia Mar/Bahia Cabana
1310 Seabreeze Boulevard

Stop 8 Beach Place
Intracoastal end of Cortez St

Stop 9 Gallery ONE Doubletree Guest Suites
2670 East Sunrise Boulevard

Stop 10 Shooter's Waterfront Cafe
3033 NE 32nd Ave

Whistle Stops

Water Taxi has several location within the regular route that you can call 954.467.6677 for a pre-arranged pick-up.

il Lugano Hotel
3333 NE 32nd Avenue

The Pillars Hotel

111 N. Birch Rd.

Riverside Hotel

620 East Las Olas Blvd.

Esplanade Park

420 SW Second St.

Vessel capacities are regulated by the United States Coast Guard, and may not be exceeded. Boarding is first come, first served with ticket holders boarding first.

Crew members are permitted to accept gratuities. If you enjoyed your trip, please consider leaving a tip to show your appreciation.

FARES & SCHEDULES

Tickets may be purchased on board. We accept cash, credit cards, or travelers' checks.

Adult All Day Pass \$20.00

Unlimited rides all day in Fort Lauderdale and Hollywood.

Youth All Day Pass \$13.00

Youth 5 - 11 years.

Children 4 and under FREE

Senior All Day Pass \$17.00

Seniors 65 and over.

Proof of age is required.

Family Pack \$60.00

Includes 2 regular fares and up to 3 youth (5-11) or seniors (65+).

MOONLIGHT MADNESS - After 5pm

Everyone rides for kids' prices! \$13.00

Must be purchased on board after 5pm.

HOLLYWOOD ROUTE - Service between all Hollywood stops \$10.00**SIX RIDE PACK - Six All Day passes for the price of five. \$99.00!**

Great for small groups or couples here for multiple days.

ANNUAL PASS - \$200.00

Valid for unlimited rides for one person for one calendar year from the date of purchase.

- Water Taxi Tickets are not redeemable, refundable, or transferable.
- Damaged or illegible tickets are invalid and will not be replaced by Water Taxi or its authorized distributors.
- US Coast Guard Regulations limit our boat's maximum capacity. Seating is subject to availability.

Area Attractions

Stop #1



Water Taxi Garage - \$5.00

All day parking and you can buy your tickets there.

Briny Riverfront PubLas Olas Riverfront
Museum of Art Fort Lauderdale
Museum of Discovery & Science
AutoNation/IMAX Theater
Riverfront Cruises
Riverwalk/Esplanade Park
Broward Center for the Performing Arts

Stop #1a

Pirate Republic

Stop #2

Downtowner Saloon

Stop #3

Fort Lauderdale Children's Theatre
Las Olas Boulevard
Stranahan House
Indigo Restaurant
Las Olas Wine Cafe
Kilwins of Las Olas
Mango's
Preston's Lobby Lounge
Udder Sweets
Evoo Market

Stop #4

15th Street Fisheries

Port Everglades

Stop #5

Bimini Boatyard
China Grill
Sports Zone 84
Broward County Convention Center

Stop #6

Pelican Landing

Stop #7

Bahia Cabana
Bubba Gump Shrimp Co.
Das Caminos
Oasis Cafe
International Swimming Hall of Fame

Stop #8

Shula's on the Beach
The Deck Restaurant
Beach Place
Fort Lauderdale Beach

Stop #9

B'stro on the Beach
Franco & Vinny's
Vue on the Water (GalleryONE hotel)
Bonnet House
Galleria Mall
Hugh Taylor Birch State Park

Stop #10

da Campo Osteria
Chart House
Shooters Waterfront Cafe
Flip Flops Dockside Eatery

Neighborhood/Community Affairs Committee Meeting
October 28, 2013

**Discussion Regarding The Log Cabin Property And The Possibility Of A Collaborative
Community Center**

Commission Item C4K, October 16, 2013
(Requested By Commissioner Tobin)

John Rebar, Parks and Recreation Department Director
Maria Ruiz, Office of Community Services Division Director

ITEM #5



COMMITTEE MEMORANDUM

TO: Neighborhoods/Community Affairs Committee Members

FROM: Jimmy L. Morales, City Manager

DATE: October 28, 2013

SUBJECT: **A FURTHER DISCUSSION REGARDING THE POTENTIAL USES BY THE CITY OF MIAMI BEACH PARKS AND RECREATION DEPARTMENT AND THE CITY'S OFFICE OF COMMUNITY SERVICES FOR THE APPROXIMATE 52,000 SQUARE FEET OF CITY OWNED PROPERTY LOCATED AT 8108-8140 COLLINS AVENUE, KNOWN AS THE LOG CABIN PROPERTY**

BACKGROUND

On September 30, 2013, the Neighborhoods & Community Affairs Committee heard an item regarding the early termination of the lease dated July 2006 between the City of Miami Beach and Log Cabin Enterprises. Direction was given to further study and present back to the Committee a more analytical and programmatic approach for the site.

The Log Cabin Site

The Log Cabin site run has 300 feet fronting Collins Avenue and is 175 feet wide. The property has three (3) closed structures:

- 1) Lounge Building – 900 square feet
- 2) Log Cabin Building - 1,086 Square feet
- 3) Education Building - 2,370 square feet

*(*note- the Education Building consists of 4 classrooms, sketch attached)*

Current Conditions

CMB Property Management staff has performed an initial assessment of the three buildings. A more in-depth facility condition assessment is currently be performed by an outside engineering firm.

Initial findings:

- All three building may be immediately inhabited.
- All three buildings are in need of cleaning and fresh paint
- IT needs to be determined after use is identified.
- Outdoor area needs complete cleanup as the area was vacated with many of the landscape nursery materials and support structures left behind.

Upon review of the comprehensive facility condition report, Property Management will request those longer term deficiencies through the FY 2014/15 budget development process.

Proposed City Programming

The Parks and Recreation Department has recently visited the site numerous times to further evaluate the space. The Department has concluded that the site can successfully become the future home of the Miami Beach Teen Club (North Beach) to add to the success of the Teen Club located at the 21st Street Recreation Center. Currently, the North Beach Teen Club has been programmed out of Fairway Park which has proven challenging due to its infrastructure and neighborhood park characteristics such as (1) Pavilion vs. Closed Building, and (2) Programmed Site vs. Neighborhood Park.

The City of Miami Beach Teen Club is a program that prevents and reduces delinquent behavior by providing recreational opportunities to the community's at-risk youth in a positive and safe environment. The Teen Club has, over the years, proven to promote and foster personal growth by encouraging teens to become well-rounded individuals. The Miami Beach Teen Club currently has an enrollment of 280 teenagers ranging from ages 12-18. From these, 190 participants attend the 21st Street Teen Center and 90 are at Fairway Park. Additionally, the site could accommodate the construction of the City's first skate park. The combination a teen center adjacent to a skate park would create an environment to serve more teenagers and likely attract teens to our center whom otherwise would not be involved in a structured teen club.

The Office of Community Services can augment Recreation's programming by relocating its Family Group Conferencing services once the Educational Building is furnished. In addition, there are Miami Beach Service Partnership member agencies that can provide much-needed direct services to area residents (including rent and utility assistance, family and marriage counseling, credit and first-time homebuyer counseling, and more). These services can be provided in cooperation with, and without interference to proposed Teen Club programming. Funding for these programs is provided by existing grant resources from The Children's Trust and through collaborative Memoranda of Understanding with Service Partnership agencies seeking to locate direct services within our City. Furthermore, the Office of Community Services has several programs actively serving families in North Beach that can eventually provide programming in the space including Morning All Stars (serving middle school students) and the Parent-Child Home Program (serving new parents and infants), among others.

Teen Job Corps

Teen Job Corps, a non-profit Miami Beach Service Partnership member agency, has been seeking office and storage space since losing its space at the now built North Beach Senior Center. For the past several years, Teen Job Corps has employed area youth to work in landscaping, removal of non-native vegetation and plantings across the street from the Log Cabin at North Shore Open Space Park.

As currently configured, the agency may be able to use the Log Cabin building as well as the flower shop area located in the self-standing building to the west of the Log Cabin.

MACtown, Inc. Proposal

MACtown, Inc. is a non-profit organization that primarily serves developmentally disabled adults with a variety of services including Adult Day Programs, Supported Employment and group homes. In its correspondence submitted to the City's Tourism, Culture and Economic Development Department dated September 30, 2013, MACtown, Inc. proposed transporting 20 to 25 developmentally disabled clients currently served at its Miami location to the Log Cabin for day training program services. In exchange, the agency would be willing "to serve at least five (5) disabled Miami Beach residents pro bono". Furthermore, in its proposal, MACtown "would utilize the plant nursery operations" as a training environment to

subsequently place clients in jobs in the “wholesale plant/nursery industry or retail business (Home Depot, Lowes, etc.)”

For purposes of clarification, the State of Florida defines developmental disability as “a disorder or syndrome that is attributable to intellectual disability, cerebral palsy, autism, spina bifida, or Prader-Willi syndrome; that manifests before the age of 18; and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely.” As alluded to by MACtown in its September 30th correspondence, “there are currently over 20,000 Floridians on a waiting list for services.” Staff was unable to find any evidence that the State has any intention to tackle this wait list. This is a critical fact as MACtown, like the site’s prior provider, Sunrise Community, Inc., relies on the funding from Medicaid to offset operational expenses as noted in its proposal for assuming the Log Cabin property. Sunrise Community, Inc. was serving only two Miami Beach residents prior to its closure.

According to Agency for Persons with Disabilities, there are currently 45 residents receiving a Medicaid Waiver from the State. There are an additional 57 residents on the waitlist. The Medicaid Waiver program allows recipients to ‘waive’ institutionalization and instead choose to direct services to assist them to live in the community. It is important to note that, though there are 45 residents with a waiver, only two had opted to seek services at the Log Cabin up until recently.

While the City has strongly held to a policy of inclusion in all of its programs, Adult Day Programs by creation restrict services to clients meeting the State’s definition for disability. As a philosophy, The Children’s Trust, the Miami Beach Services Partnership and other service providers have adopted practices that mainstream – rather than segregate -- clients with disabilities.

More so, in support of independent living, the City has long fostered support of *Ticket To Work* initiatives that enable disabled persons to augment their disability benefits with earned income as a means of living independently within our community. This policy alignment is prescient given the demand for subsidized housing in our City. For *Ticket To Work* to serve its practical ends, clients (who tend to rely on public transportation) must seek employment close to their homes. With no Home Depot, Lowes or wholesale nursery employer in our City, the Log Cabin’s traditional agricultural work skills do not translate into permanent employment within our City, thereby handicapping the successful transition of clients from day programs.

ANALYSIS

While there are many potential uses for the Log Cabin site, the proposed joint usage by the City’s Parks and Recreation Department and Office of Community Services allows for the immediate programming of the site serving the area’s residents with much needed recreation and human services support with existing resources.

- **Immediate Opportunity for Action**
 - Relocate existing Teen Club from Fairway Park including necessary equipment, furniture and supplies.
 - Teen Club would operate from 2:00PM until 6:30PM allowing joint use of facility with Community Services.
 - Community Services programs would include:
 - Family Group Conferencing services
 - Rent and utility assistance
 - Family and marriage counseling
 - Credit and first-time homebuyer counseling
 - Teen Job Corps could use Green Building for storage

- Improvements needed for Log Cabin would be pursued through the FY 2014/15 budget development process.
- Construct City's first skate park adjacent buildings.
- Explore opportunity to shift Log Cabin to the north to accommodate larger skate park and the future construction of a basketball court.
- Pursue funding for future basketball court.
- **Other Considerations**
 - Expand Teen Club program offerings to mirror program at 21st Street.
 - Consider locating skate park and basketball court on the vacant property to the north which would eliminate need to relocate log cabin as well as create more usable space for all functions.
 - The City of Surfside is interested in a partnership with the City of Miami Beach to locate the skate park on the vacant property located at the corner of 87th Terrace and Collins Ave. Drawbacks of this site include the overall size of the property and more importantly having a teen club immediately adjacent a skate park creates an environment to serve more teenagers and likely attract teens to our center whom otherwise would not be involved in a structured teen club.
 - In the future, the Office of Community Services envisions expanding the site to offer a variety of additional programming including:
 - A working restaurant (providing employment and hospitality training for parent and teenagers served through its programs).
 - Book clubs for young adults and new parents.
 - A food cooperative to better to serve the food insecure residents of the area.
 - Suspension Diversion Program (to offer a safe, educational environment for youth suspended from school who would otherwise be home or on the streets).
 - Expanded training programs to build capacities among our non-profits community-based providers.
 - Intake and screening services so that North Beach residents do not have to go to City Hall to obtain rent and utility assistance or referrals for services.

Conclusion

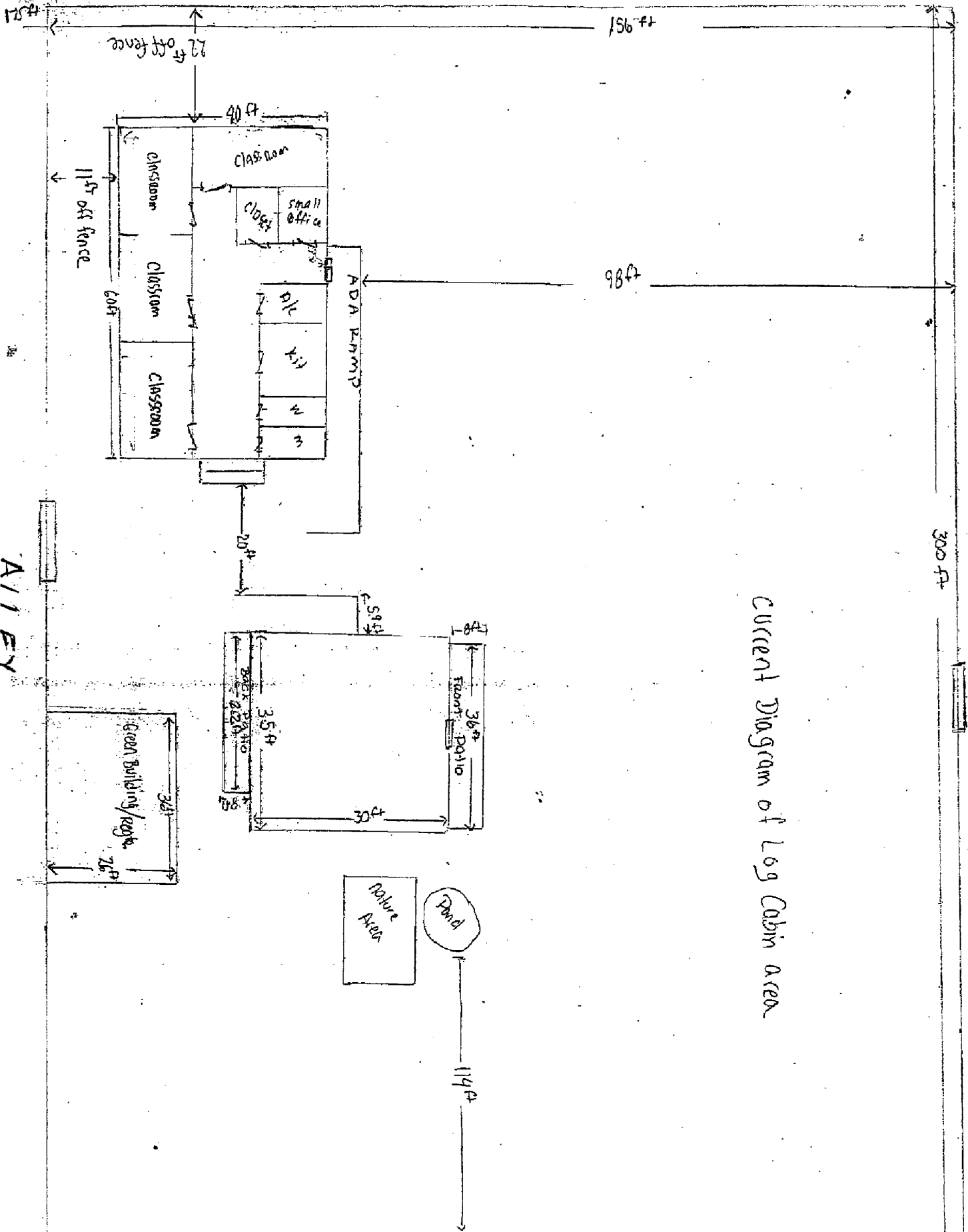
Administration recommends the City of Miami Beach moves forward with occupying and programming the site as described above by relocating the existing Fairway Park Teen Club in conjunction with immediate programs available through Community Services. Additionally commence with site identification, planning and construction of a skate park.

While MACtown offers valuable services, we have concerns whether its proposal to relocate up to 25 Miami clients in exchange for serving five residents pro bono serves a stated need among our residents as demonstrated in the lack of resident enrollment for the prior adult day program provider located at the Log Cabin. More so, the job skills proposed do not translate to employability within our City because of the absence of agriculturally-focused businesses. None-the-less, we clearly appreciate the need to provide vocational opportunities for the disabled in our community. We feel that the best approach for this would be to continue discussions with MACtown and other agencies to determine how this need can be best served in some other manner.

JLM/MT/KB/JR



82 ST



Current Diagram of Log Cabin area

COLLINS AVE

Neighborhood/Community Affairs Committee Meeting
October 28, 2013

**Discussion Regarding Potential Options For Collins Canal Project/Discussion
Regarding Interim Landscaping Options For The Dade Boulevard Shared-Use Path
Project**

Commission item C6B, October 16, 2013
(*Requested by Commissioner Tobin*)

Jose Gonzalez, Transportation Manager

ITEM #6



MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov

COMMITTEE MEMORANDUM

TO: Neighborhood/Community Affairs Committee

FROM: Jimmy L. Morales, City Manager

DATE: October 28, 2013

SUBJECT: **DISCUSSION REGARDING INTERIM LANDSCAPING OPTIONS FOR THE DADE BOULEVARD SHARED-USE PATH PROJECT**

This item was discussed at the Neighborhood/Community Affairs Committee (NCAC) meeting on September 30, 2013 and discussed at the City Commission meeting on October 16, 2013. The item was referred back to NCAC for discussion in October. At the City Commission meeting on October 16, 2013, the Commission directed the Administration to work with the Greenspace-Tree Advisory Group (GTAG) to develop options that would provide short-term landscaping along the approximately 650 feet long constrained portion of the Dade Boulevard shared-use bike path project (between Alton Road and Meridian Avenue).

BACKGROUND

The Dade Boulevard/Collins Canal Seawall and Dade Boulevard Shared-Use Path construction projects have been substantially completed. The project included the construction of a new seawall along the north bank of the Collins Canal and the addition of a shared-use path adjacent to the canal between 17th Street and Convention Center Drive.

As part of the construction, most of the landscape adjacent to the canal was removed to ensure that pedestrians and bicycles could use the shared-use path in accordance with the design standards. The vegetation along a section of approximately 650 feet between Alton Road and Meridian Avenue was the most impacted due to right-of-way constraints. As a means to mitigate the impact to the landscaping, and based on input received from the Greenspace-Tree Advocacy Group (GTAG), the City conducted a traffic study to evaluate the potential elimination of the left turn bay from eastbound Dade Boulevard into the Publix Supermarket driveway. The elimination of the left turn bay into the Publix driveway would allow a portion of Dade Boulevard to be shifted north in order to accommodate landscaping in the constrained section adjacent to Collins Canal; however, approval from Publix is required for such elimination. The traffic study was completed by Atkins in October 2012 and concluded that the potential elimination of left turn movements at the driveway would have minimal effect on the traffic operations at the intersections within the study area; however the accessibility limitations would affect some Publix patrons. In addition, the elimination of the left turn movements in and out of the Publix driveway may affect the safety of the Dade Boulevard corridor by potentially increasing illegal U-turns.

Given that Dade Boulevard is under the jurisdiction of Miami-Dade County and pursuant to a meeting between GTAG members, Miami Beach Public Works staff, and Miami-Dade County Public Works and Waste Management Department (MDCPWWMD) staff, MDCPWWMD requested that Publix Supermarket approve the elimination of the left turn bay as a condition for county approval.

Following the completion of the traffic impact study for the elimination of the left turn bay into Publix Supermarket, as a means to mitigate the accessibility impacts, the City developed a preliminary concept for a roundabout at the intersection of Dade Boulevard and Michigan Avenue. A roundabout at the intersection of Michigan Avenue and Dade Boulevard may improve the safety and operation of the intersection, allowing for all turning movements and improving accessibility into Publix Supermarket, particularly if the left turn bay into the Publix driveway is eliminated. Atkins North America Inc. was retained to complete a feasibility study for the roundabout at Michigan Avenue and Dade Boulevard. The study was completed in April 2013 and determined that the roundabout would be geometrically feasible and would improve the operational Level of Service (LOS) at the intersection.

The Preliminary Traffic Report prepared by South Beach ACE/Tishman/UIA/OMA for the Miami Beach Convention Center (MBCC) Redevelopment Project identified Dade Boulevard as the primary access route into the MBCC from the north. The traffic report also determined that Dade Boulevard is the only access roadway within the immediate vicinity with surplus capacity. Given the heavy volume of vehicles anticipated to travel through the intersection of Dade Boulevard and Michigan Avenue as a result of major events at the MBCC, the roundabout concept at this intersection would require a more detailed engineering analysis and design to determine its impact on the MBCC Transportation Plan.

UPDATE SINCE COMMISSION MEETING ON OCTOBER 16, 2013

Pursuant to the directive of the City Commission and the recommendation of the NCAC, the Administration will meet with GTAG to discuss the feasibility of several landscaping option previously developed by GTAG.

It should be noted that a long term solution needs to be part of the Miami Beach Convention Center (MBCC) Redevelopment Project, given that the intersection of Michigan Avenue and Dade Boulevard will serve as a primary access to the MBCC for patrons coming from the North.


KGB/ETC/JRG/JFD

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Neighborhood/Community Affairs Committee Meeting
October 28, 2013

Discussion Regarding Alternative Location For Dog Park In South Pointe Park.
Commission Item C4K, October 16, 2013
Requested by Commissioner Tobin)
(Discussion only)

John Rebar, Parks and Recreation Department Director

ITEM #7

PRESENTATION AT COMMITTEE MEETING

NEIGHBORHOOD/COMMUNITY AFFAIRS COMMITTEE PENDING ITEMS

FOR INFORMATION PURPOSES ONLY

| Item # | Commission Referral Date | Title | Referred By | Date Last Heard at NCAC | Comments |
|---------------|---|--|---|--------------------------------|--|
| 1 | <i>Item R9G, April 14, 2010</i> | Discussion Regarding Belle Isle Traffic And Parking Conditions. | <i>Commissioner Wolfson</i> | <i>April 27, 2010</i> | <i>Last discussed at NCAC April 27, 2010 – Pending (Remaining topic to have legal prepare a reso for Commission to be notified in the event of a repair or dispute that diminishes services to the community that can be cured pending resolution of the issue).</i> |
| 2 | <i>Item C4C, June 1, 2011</i> | Consideration And Discussion Of Proposed Amendments To The City's Noise Ordinance. | <i>City Attorney's office</i> | <i>June 26, 2013</i> | <i>Last Discussed at NCAC June 26, 2013, New Committee to be created and discuss item then bring back to NCAC.</i> |
| 3 | <i>Item R7A, January 11, 2012</i> | Discussion Regarding A Resolution Granting And Authorizing The Mayor And City Clerk To Execute An After-The-Fact Revocable Permit To Asr Berwick Family Ltd Partners, As Owner Of The Commercial Property Located At 335 West 47th Street, To Retain A/C Units, A Utility Room, And A Trash Enclosure, Currently Placed Within The Public City Right-Of-Way On West 47th Court. | <i>City Commission</i> | <i>May 22, 2012</i> | <i>Deferred to a future meeting of the NCAC pending further discussions amongst interested parties regarding issues related to parking</i> |
| 4 | <i>Item R9H, June 6, 2012</i> | Discussion Regarding Commercial Use Of Residential Property | <i>Commissioner Tobin</i> | | <i>Per JGG this is on hold pending Legal</i> |
| 5 | <i>Item R7B, October 24, 2012</i> | Discussion Regarding The Establishment Of The City's Ticket Policy | <i>City Manager's Office</i> | | |
| 6 | <i>Item C4M, June 5, 2013</i> | Discuss Safety And Water Sports In Residential Areas On Miami Beach. | <i>Commissioner Tobin</i> | | <i>To return to NCAC November meeting</i> |
| 7 | <i>Item R7Q, September 11, 2013</i> | Discussion Regarding The Ranking Of Proposals, Pursuant To Request For Proposals (RFP) No. 95-2013ME, For The Comprehensive Professional Tennis Management And Operations Services At The City's Flamingo And North Shore Park Tennis Centers | <i>Parks & Recreation/Procurement Departments</i> | | <i>Pending November 2013</i> |
| 8 | <i>Item R9I, September 11, 2013</i> | Discussion Regarding Consideration Of Creating A Mural Wall Area In North Beach Similar To The Wynwood Walls In The City Of Miami Where Artists Would Be Able To Express Themselves | <i>Commissioner Gongora</i> | | <i>Pending November 2013</i> |
| 9 | <i>Item C4F May 8, 2013</i> | Discussion Regarding A New False Claims Ordinance. (Whistle Blower) | <i>Commissioner Libbin</i> | | <i>Last heard at the July 30, 2013 NCAC. To be reviewed by City Attorney's Office and Bring back to Committee</i> |

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|----|------------------------------|---|---|--|--|
| 10 | Item C4S February 6, 2013 | Discussion Regarding Bringing The Junior Orange Bowl Tennis Tournament To Miami Beach | Commissioner Tobin | | Last heard at the July 30, 2013 NCAC. To come back to Committee in December 2013 |
| 11 | Item | Discussion Regarding Bicyclist Safety Campaign With The Miami Beach Police Department, Deco Bikes And Local Bicycle Rental Companies | Commissioner Weithorn | | Last heard at the July 30, 2013 NCAC. Referred to the Bicycle Committee and bring back to NCAC in March 2014 |
| 12 | Item C4C October 16, 2013 | Discussion Regarding The Modification Of South Beach Local Circulator Service To Belle Isle And Improvement Of On-Time Performance On The Bi-Directional Route | Public Works Department | | To be discussed at the November 25 th NCAC meeting |
| 13 | Item C4F October 16, 2013 | Discussion Regarding The Review Of Existing Policy On Public Testimony At Public Meetings | City Attorney's Office and Office of the City Manager | | To be discussed at the November 25 th NCAC meeting |
| 14 | Item C4H | Discussion Regarding A Maintenance Plan Along The 41 st Street Business Corridor And Possibly Appointing A Dedicated Liaison To The Corridor (Like Lincoln Road) | Commissioner Tobin | | To be discussed at the November 25 th NCAC meeting |
| 15 | Item C4I October 16, 2013 | Discussion Regarding How To Deal With Noise Abatement Issues Relative To Overhead Flights That Do Not Follow The Standards Set By The FAA. | Commissioner Exposito | | To be discussed at the November 25 th NCAC meeting |
| 16 | Item C4J October 16, 2013 | Discussion Regarding Trespass Sign Program For Buildings Under Construction | Commissioner Weithorn | | To be discussed at the November 25 th NCAC meeting |
| 17 | Item C6B October 16, 2013 | Discussion Regarding The Conditions Of South Pointe Park | | | To be discussed at the December 23 rd , NCAC meeting |
| 18 | Item C6B October 16, 2013 | Discussion Regarding Sightseeing And Tour Bus Industry Regulations | | | To be discussed at the December 23 rd , NCAC meeting |
| 19 | Item C6B October 16, 2013 | Discussion Regarding The Continuation Of The Adopt-A-Beach Pilot Program | | | To be discussed at the November 25th, NCAC meeting |
| 20 | Item C7T October 16, 2013 | Discussion Regarding A Resolution Approving An Amendment To The Flamingo Neighborhood Basis Of Design Report For 10-Foot Travel Lanes On Local Avenues And Streets As Well As Four (4) Feet Of Green Space And A 10-Foot Wide Path/Cycle Track Sidewalk Shared On Each Side In Lieu Of Bike Lane For 16th Street. | Public Works | | To be discussed at the November 25th, NCAC meeting |
| 21 | Item R9S October 16, 2013 | Discussion Regarding Exploring Into An Establishment For A Handicap Beach Within Our City Limits | Commissioner Exposito | | To be discussed at the November 25th, NCAC meeting |